

Aaron M. Sheanin (SBN 214472)
asheanin@robinskaplan.com
ROBINS KAPLAN LLP
2440 W El Camino Real, Suite 100
Mountain View, CA 94040
Telephone: (650) 784-4040
Facsimile: (650) 784-4041

Attorneys for Plaintiffs and the Proposed Classes

(Additional Counsel on Signature Page)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOANNA KATCHER, JAMES MAREAN,
YVONNE PEYCHAL, JONATHAN RIZZO,
LARRY STEELE, SETH SWANSON,
ANDREW SYVERSON, AND SHAUN
WOLF,

Plaintiffs,

v.

HEADWAY TECHNOLOGIES, INC.,
HUTCHINSON TECHNOLOGY INC.,
MAGNECOMP PRECISION
TECHNOLOGY PUBLIC CO. LTD., NAT
PERIPHERAL (DONG GUAN) CO., LTD.,
NAT PERIPHERAL (H.K.) CO., LTD., NHK
SPRING CO. LTD., NHK
INTERNATIONAL CORPORATION, NHK
SPRING (THAILAND) CO., LTD., NHK
SPRING PRECISION (GUANGZHOU) CO,
LTD., SAE MAGNETICS (H.K.) LTD.,
AND TDK CORPORATION,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs, on behalf of themselves and all others similarly situated (the “Classes” as defined below), upon personal knowledge as to the facts pertaining to themselves and upon information and belief as to all other matters, based on the investigation of counsel, bring this class action against Defendants Headway Technologies, Inc., Hutchinson Technology Inc.,

1 Magnecomp Precision Technology Public Co. Ltd., NAT Peripheral (Dong Guan) Co., Ltd., NAT
2 Peripheral (H.K.) Co., Ltd., NHK Spring Co. Ltd., NHK International Corporation, NHK Spring
3 (Thailand) Co., Ltd., NHK Spring Precision (Guangzhou) Co, Ltd., SAE Magnetics (H.K.) Ltd.,
4 and TDK Corporation for damages, injunctive relief and other relief pursuant to federal antitrust
5 laws, state antitrust, unfair competition, consumer protection laws, and the laws of unjust
6 enrichment, demand a trial by jury, and allege as follows:

7 I. NATURE OF THE ACTION

8 1. This lawsuit arises out of a global conspiracy among Defendants and their co-
9 conspirators to fix prices of and allocate market shares for hard disk drive (“HDD”) suspension
10 assemblies. As Assistant Attorney General of the Department of Justice (“DOJ”) Antitrust Division
11 Makan Delrahim described, HDD suspension assemblies are “critical to the operation and
12 performance of electronic devices, and their impact on American consumers and business is direct
13 and substantial.”¹

14 2. HDD suspension assemblies are a component of hard disk drives, which use
15 magnetism to store information electronically. HDDs use recording heads, attached to sliders, to
16 read from and write onto rapidly spinning disks. HDD suspension assemblies hold the recording
17 heads close to the disks and provide the electrical connection from the recording heads to the hard
18 disk drives’ circuitry. HDDs containing HDD suspension assemblies are sold both as stand-alone
19 devices and incorporated into a variety of ubiquitous electronics such as desktop computers, laptop
20 computers, gaming systems, printers, and copy machines.

21 3. Plaintiffs seek to represent all persons and entities who, during the period from and
22 including May 2008 through such time as the anticompetitive effects of the Defendants’ conduct
23 ceased (the “Class Period”), indirectly purchased a product not for resale, which included as a
24 component part one or more HDD suspension assemblies that were manufactured or sold by the
25 Defendants, any current or former subsidiary of the Defendants, or any co-conspirator of the
26 Defendants.

27 ¹ *Japanese Manufacturer Agrees to Plead Guilty to Fixing Prices for Suspension Assemblies*
28 *Used in Hard Disk Drives*, DOJ (Jul. 29, 2019), <https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk>.

4. At all relevant times, Defendants manufactured and sold HDD suspension assemblies throughout and into the United States. As of 2016, Defendants TDK and NHK, along with their subsidiaries, were the leading manufacturers of HDD suspension assemblies, with a combined worldwide market share of approximately 90%.

5. From approximately May 2008 through at least April 2016, Defendants and their co-conspirators contracted, combined, or conspired to fix, raise, maintain, and/or stabilize prices of and allocate market shares for HDD suspension assemblies in the United States.²

6. Since at least 2016, United States and foreign governments have investigated potential price-fixing of HDD suspension assemblies; in 2019, Defendant NHK (as defined below) admitted guilt. On July 29, 2019, the DOJ announced that Defendant NHK agreed to plead guilty and pay a \$28.5 million fine for its role in a conspiracy to suppress and eliminate competition by fixing prices of HDD suspension assemblies sold in the United States and elsewhere.³

7. On February 9, 2018, the Japanese Fair Trade Commission (“JFTC”) issued a cease and desist order to both Defendants TDK and NHK and found that they substantially restrained competition in the HDD suspension assemblies market by agreeing to maintain sales prices, fining NHK Spring and one of their subsidiaries ¥1076.16 million yen.⁴

8. Concurrently with the JFTC investigation, the DOJ opened an investigation regarding HDD suspension assemblies. Pursuant to that investigation, on July 26, 2016 Defendant Hutchinson Technology, Inc. (“HTI”) received a letter from the DOJ requesting documents relating to the investigation. That same day, the JFTC and DOJ performed an on-site inspection of an NHK company.⁵

9. Subsequently, in April 2018, Brazilian antitrust authorities launched an investigation

² Information, *United States of America v. NHK Spring Co., Ltd*, 2:19-cr-20503 (E.D. Mich. Jul. 29, 2019), ECF No. 1 (“NHK Information”).

³ *Japanese Manufacturer Agrees to Plead Guilty to Fixing Prices for Suspension Assemblies Used in Hard Disk Drives*, DOJ (Jul. 29, 2019), <https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk>; NHK Information at 2-3.

⁴ Japan Fair Trading Commission, *The JFTC Issued a Cease and Desist Order and Surcharge Payment Orders to the Manufactures of Suspension for Hard Disk Drives* (Feb. 9. 2019), <https://www.jftc.go.jp/en/pressreleases/yearly-2018/February/180209.html>

⁵ <https://www.nhkspg.co.jp/eng/ir/pdf/Annual%20Report%202018.pdf>

1 into allegations that Defendant TDK and four other companies colluded from 2003 to May 2016 to
2 fix prices of HDD suspension assemblies. The international cartel allegedly shared data and
3 allocated customers to maintain artificially high prices on HDD suspension assemblies used in hard
4 disks.

5 10. The Defendants and their co-conspirators participated in a combination and
6 conspiracy to suppress and eliminate competition for HDD suspension assemblies by agreeing to
7 rig bids for, and to fix, stabilize, and maintain the prices of HDD suspension assemblies sold in the
8 United States and elsewhere. The combination and conspiracy engaged in by the Defendants and
9 their co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in
10 violation of the Sherman Antitrust Act, 15 U.S.C. § 1, and state antitrust, unfair competition,
11 consumer protection laws, and the common law of unjust enrichment.

12 11. As a direct and proximate result of the anticompetitive and unlawful conduct alleged
13 herein, Plaintiffs and the Classes (as defined below) paid more during the Class Period for HDD
14 suspension assemblies than they otherwise would have paid in a competitive market, and have
15 thereby suffered antitrust injury to their business or property.

16 **JURISDICTION AND VENUE**

17 12. Plaintiffs bring this action under Section 16 of the Clayton Act (15 U.S.C. § 26) to
18 secure equitable and injunctive relief against Defendants for violating Section 1 of the Sherman
19 Antitrust Act (15 U.S.C. § 1). Plaintiffs also assert claims for actual and exemplary damages
20 pursuant to state antitrust, unfair competition, consumer protection and unjust enrichment laws, and
21 seeks to obtain restitution, recover damages and secure other relief against the Defendants for
22 violations of those state laws. Plaintiffs and the Classes also seek attorneys' fees, costs, and other
23 expenses under federal and state law.

24 13. This Court has jurisdiction over the subject matter of this action pursuant to Section
25 16 of the Clayton Act (15 U.S.C. § 26), Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1),
26 and Title 28, United States Code, Sections 1331 and 1337. This Court has subject matter jurisdiction
27 of the state law claims pursuant to 28 U.S.C. §§ 1332(d) and 1367, in that this is a class action in
28 which the matter or controversy exceeds the sum of \$5,000,000, exclusive of interests and costs,

1 and in which some members of the proposed Classes are citizens of a state different from some
2 Defendants.

3 14. Venue is proper in this District pursuant to Section 12 of the Clayton Act (15 U.S.C.
4 § 22), and 28 U.S.C. §§ 1391 (b), (c), and (d), because a substantial part of the events giving rise
5 to Plaintiffs' claims occurred in this District, a substantial portion of the affected interstate trade
6 and commerce discussed below has been carried out in this District, and one or more Defendants
7 reside, are licensed to do business in, are doing business in, had agents in, or are found or transact
8 business in this District.

9 15. On October 8, 2019, the Judicial Panel on Multidistrict Litigation ("JPML")
10 centralized several related actions pertaining to the conspiracy alleged herein in this District before
11 the Honorable Maxine M. Chesney as *In re Hard Disk Drive Suspension Assemblies Antitrust*
12 *Litigation*, MDL No. 2918. The JPML recognized that Defendant Headway Technologies, Inc.,
13 has its headquarters in this District and that third-party discovery is expected to take place from
14 two hard disk drive manufacturers headquartered in this District. This case is related to the actions
15 in MDL No. 2918.

16 16. This Court has *in personam* jurisdiction over Defendants because each, either
17 directly or through the ownership and/or control of its subsidiaries, *inter alia*: (a) transacted
18 business in the United States, including in this District; (b) directly or indirectly sold or marketed
19 substantial quantities of HDD suspension assemblies throughout the United States as a whole,
20 including in this District; (c) had substantial aggregate contacts with the United States, including
21 in this District; or (d) engaged in an illegal price-fixing conspiracy that was directed at, and had a
22 direct, substantial, reasonably foreseeable and intended effect of causing injury to, the business or
23 property of persons and entities residing in, located in, or doing business throughout the United
24 States, including in this District. Defendants also conduct business throughout the United States,
25 including in this District, and they have purposefully availed themselves of the laws of the United
26 States.

27 17. Defendants engaged in conduct both inside and outside of the United States that
28 caused direct, substantial, and reasonably foreseeable and intended anticompetitive effects upon

1 interstate commerce within the United States.

2 18. The activities of Defendants and their co-conspirators were within the flow of, and
3 were intended to and did have a substantial effect on interstate commerce of the United States.
4 Defendants' products are sold in the flow of interstate commerce.

5 19. HDD suspension assemblies manufactured abroad by Defendants and sold for use in
6 products in the United States are goods brought into the United States for sale, and therefore
7 constitute import commerce. To the extent any HDD suspension assemblies are purchased in the
8 United States, and such HDD suspension assemblies do not constitute import commerce,
9 Defendants' activities with respect thereto, as more fully alleged herein during the Class Period,
10 had, and continue to have, a direct, substantial and reasonably foreseeable effect on United States
11 commerce. The anticompetitive conduct, and its effect on United States commerce described
12 herein, proximately caused antitrust injury in the United States.

13 20. By reason of the unlawful activities hereinafter alleged, Defendants' unlawful
14 activities substantially affected commerce throughout the United States, causing injury to Plaintiffs
15 and members of the Classes. Defendants, directly and through their agents, engaged in activities
16 affecting all states, to fix, raise, maintain and/or stabilize prices, and allocate the market and
17 customers in the United States for HDD suspension assemblies, which conspiracy unreasonably
18 restrained trade and adversely affected the market for HDD suspension assemblies.

19 21. Defendants' conspiracy and wrongdoing described herein adversely affected persons
20 in the United States who purchased a product in the United States not for resale which included an
21 HDD suspension assembly.

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THE PARTIES**Plaintiffs**

22. Plaintiff Joanna Katcher is a resident of Los Angeles, California. During the Class Period, Ms. Katcher purchased at least one HDD suspension assembly indirectly from at least one Defendant, and was injured in her business or property as a result of Defendants' unlawful conduct alleged herein.

23. Plaintiff James Marean is a resident of Westbrook, Maine. During the Class Period, Mr. Marean purchased at least one HDD suspension assembly indirectly from at least one Defendant, and was injured in his business or property as a result of Defendants' unlawful conduct alleged herein.

24. Plaintiff Yvonne Peychal is a resident of Sevierville, Tennessee. During the Class Period, Ms. Peychal purchased at least one HDD suspension assembly indirectly from at least one Defendant, and was injured in her business or property as a result of Defendants' unlawful conduct alleged herein.

25. Plaintiff Jonathan Rizzo is a resident of Phoenix, Arizona. During the Class Period, Mr. Rizzo purchased at least one HDD suspension assembly indirectly from at least one Defendant, and was injured in his business or property as a result of Defendants' unlawful conduct alleged herein.

26. Plaintiff Larry Steele is a resident of Beckley, West Virginia. During the Class Period, Mr. Steele purchased at least one HDD suspension assembly indirectly from at least one Defendant, and was injured in his business or property as a result of Defendants' unlawful conduct alleged herein.

27. Plaintiff Seth Swanson is a resident of Franklin, Wisconsin. During the Class Period, Mr. Swanson purchased at least one HDD suspension assembly indirectly from at least one Defendant, and was injured in his business or property as a result of Defendants' unlawful conduct alleged herein.

28. Plaintiff Andrew Syverson is a resident of Chanhassen, Minnesota. During the Class Period, Mr. Syverson purchased at least one HDD suspension assembly indirectly from at least one

1 Defendant, and was injured in his business or property as a result of Defendants' unlawful conduct
2 alleged herein.

3 29. Plaintiff Shaun Wolf is a resident of Rosemount, Minnesota. During the Class
4 Period, Mr. Wolf purchased at least one HDD suspension assembly indirectly from at least one
5 Defendant, and was injured in his business or property as a result of Defendants' unlawful conduct
6 alleged herein.

7 **TDK Defendants**

8 30. Defendant TDK Corporation is a Japanese corporation with its principal place of
9 business in Tokyo, Japan. TDK Corporation – directly and/or through its affiliates, which it wholly
10 owned and/or controlled – manufactured, marketed and/or sold HDD suspension assemblies that
11 were sold and purchased throughout the United States, including in this District, during the Class
12 Period.

13 31. Defendant Magnecomp Precision Technology Public Co. Ltd. ("MPT") is a Thai
14 corporation with its principal place of business in Ayutthaya, Thailand. It is an affiliate of and
15 wholly controlled by TDK Corporation. Defendant Magnecomp – directly and/or through its
16 affiliates – manufactured, marketed and/or sold HDD suspension assemblies that were sold and
17 purchased throughout the United States, including in this District, during the Class Period.

18 32. Defendant SAE Magnetics (H.K.) Ltd. is a Chinese corporation with its principal
19 place of business in Hong Kong, China. Defendant SAE Magnetics – directly and/or through its
20 affiliates – manufactured, marketed and/or sold HDD suspension assemblies that were sold and
21 purchased throughout the United States, including in this District, during the Class Period.

22 33. Defendant HTI is a Minnesota corporation with its principal place of business in
23 HTI, Minnesota. TDK Corporation acquired HTI on October 6, 2016.⁶ It is an affiliate of and
24 wholly controlled by TDK Corporation. HTI – directly and/or through its affiliates – manufactured,
25 marketed and/or sold HDD suspension assemblies that were sold and purchased throughout the
26 United States, including in this District, during the Class Period.

27 _____
28 ⁶ TDK Corporation Announces Completion of Hutchinson Acquisition, TDK Global (Oct. 6, 2016),

34. Defendant Headway Technologies, Inc. is a California corporation with its principal place of business in Milpitas, California. It is an affiliate of and wholly controlled by TDK Corporation. Defendant Headway Technologies – directly and/or through its affiliates – manufactured, marketed and/or sold HDD suspension assemblies that were sold and purchased throughout the United States, including in this District, during the Class Period.

NHK Defendants

35. Defendant NHK Spring Co., Ltd. is a Japanese corporation with its principal place of business in Yokohama, Japan. NHK Spring Co., Ltd. – directly and/or through its affiliates, which it wholly owned and/or controlled – manufactured, marketed and/or sold HDD suspension assemblies that were sold and purchased throughout the United States, including in this District, during the Class Period.

36. Defendant NHK International Corporation is a Michigan corporation with its principal place of business in Novi, Michigan. It is an affiliate of and wholly controlled by NHK Spring Co., Ltd. – directly and/or through its subsidiaries, which it wholly owned and/or controlled – manufactured, marketed and/or sold HDD suspension assemblies that were sold and purchased throughout the United States, including in this District, during the Class Period.

37. Defendant NHK Spring (Thailand) Co., Ltd. is a Thai corporation with its principal place of business in Samutprakarn, Thailand. It is an affiliate of and wholly controlled by NHK Spring Co., Ltd. – directly and/or through its subsidiaries, which it wholly owned and/or controlled – manufactured, marketed and/or sold HDD suspension assemblies that were sold and purchased throughout the United States, including in this District, during the Class Period.

38. Defendant NHK Spring Precision (Guangzhou) Co., Ltd. is a Chinese corporation with its principal place of business in Guangzhou, China. It is an affiliate of and wholly controlled by NHK Spring Co., Ltd. – directly and/or through its subsidiaries, which it wholly owned and/or controlled – manufactured, marketed and/or sold HDD suspension assemblies that were sold and purchased throughout the United States, including in this District, during the Class Period.

39. Defendant NAT Peripheral (Dong Guan) Co., Ltd. (“NAT Dong Guan”) is a Chinese corporation with its principal place of business in Guangdong, China. It is an affiliate of and wholly

1 controlled by NHK Spring Co., Ltd. – Defendant Nat Dong Guan directly and/or through its
2 subsidiaries, which it wholly owned and/or controlled – manufactured, marketed and/or sold HDD
3 suspension assemblies that were sold and purchased throughout the United States, including in this
4 District, during the Class Period.

5 40. Defendant NAT Peripheral (H.K.) Co., Ltd. (“NAT H.K.”) is a Chinese corporation
6 with its principal place of business in Hong Kong, China. It is an affiliate of and wholly controlled
7 by NHK Spring Co., Ltd. – Defendant NAT H.K. directly and/or through its subsidiaries, which it
8 wholly owned and/or controlled – manufactured, marketed and/or sold HDD suspension assemblies
9 that were sold and purchased throughout the United States, including in this District, during the
10 Class Period.

11 **AGENTS AND CO-CONSPIRATORS**

12 41. The acts alleged against the Defendants in this Complaint were authorized, ordered,
13 or done by their officers, agents, employees, or representatives, while actively engaged in the
14 management and operation of Defendants’ business or affairs.

15 42. Various persons and/or firms not named as Defendants herein may have participated
16 as co-conspirators in the violations alleged herein and may have performed acts and made
17 statements in furtherance thereof. Plaintiffs reserve the right to name some or all of these persons
18 as defendants at a later date.

19 43. Whenever in this Complaint reference is made to any act, deed, or transaction of any
20 corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or
21 through its officers, directors, agents, employees, or representatives while they were actively
22 engaged in the management, direction, control, or transaction of the corporation’s business or
23 affairs.

24 44. Each Defendant or co-conspirator acted as the principal, agent, or joint venture of,
25 or for, other Defendants and co-conspirators with respect to the acts, violations, and common course
26 of conduct alleged by Plaintiffs. Each Defendant and co-conspirator that is a subsidiary of a foreign
27 parent acts as the United States agent for HDD suspension assemblies made by its parent company.
28

INTERSTATE TRADE AND COMMERCE

45. The conduct of Defendants and their co-conspirators has taken place in, and affected the continuous flow of interstate trade and commerce of the United States in that, *inter alia*:

a. During the Class Period, Defendants and their co-conspirators sold and distributed HDD suspension assemblies throughout the United States;

b. Defendants and their co-conspirators have each used instrumentalities of interstate commerce to manufacture, sell, distribute, and/or market HDD suspension assemblies throughout the United States;

c. Defendants and their co-conspirators manufactured, sold, and shipped substantial quantities of HDD suspension assemblies in a continuous and uninterrupted flow of interstate commerce to customers; and

d. The conspiracy alleged herein affected billions of dollars of commerce. During the Class Period, Defendants collectively controlled approximately 90% of the global HDD suspension parts market. Defendants and their co-conspirators have inflicted antitrust injury by artificially raising prices paid by Plaintiffs and other entities who are themselves engaged in commerce.

FACTUAL ALLEGATIONS

A. The HDD Suspension Assembly Industry.

46. HDD suspension assemblies are a critical component of HDDs.⁷ HDDs use magnetism to write, retrieve and store vast amounts of information electronically.⁸ HDDs are installed in a variety of electronic products including desktop computers, laptop computers, copy machines, and gaming systems.

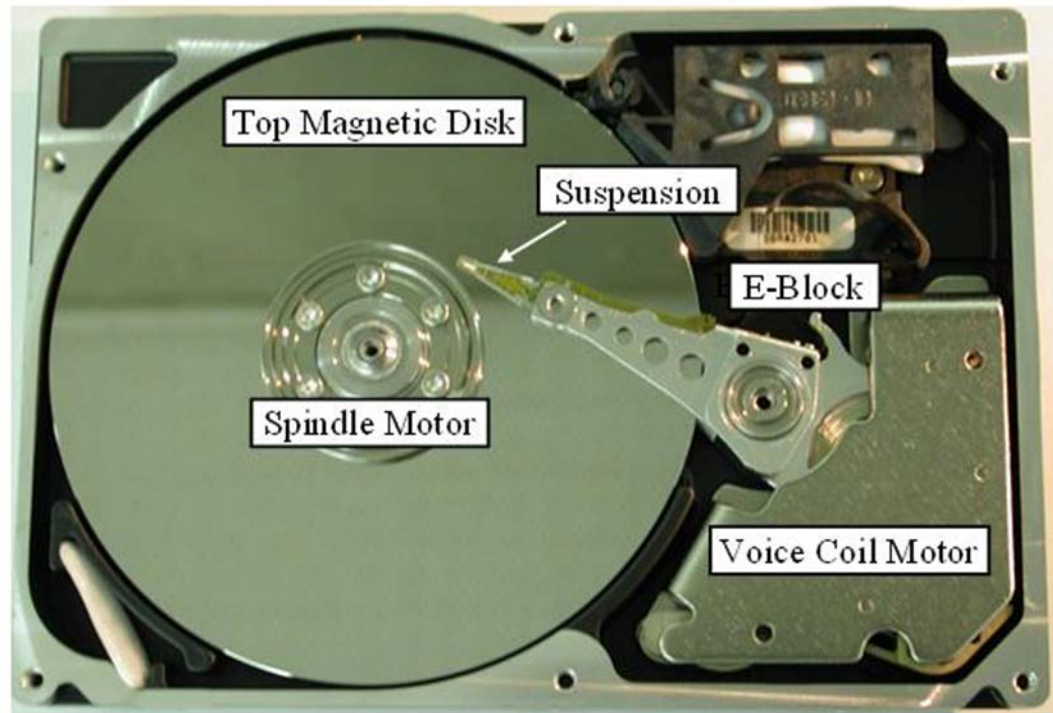
47. HDDs are comprised of, among other things, spinning magnetic disks and magnetic heads that fly over the disks, reading and writing the information contained on the disks (*see* Figure

⁷ *Hutchinson Shares Extend Slide on Continued FTC Antitrust Review*, THESTREET (Jan. 5, 2016), <https://www.thestreet.com/story/13412469/1/hutchinson-shares-keep-falling-on-extended-ftc-antitrust-review.html>.

⁸ *Hard Drives*, EXPLAINTHATSTUFF, <https://www.explainthatstuff.com/harddrive.html> (last visited Jul. 30, 2015).

1) ⁹ HDD suspension assemblies hold the magnetic heads in position over the disks. ¹⁰ Thus, HDD suspension assemblies are essential to the functioning of HDDs.

(Figure 1) ¹¹

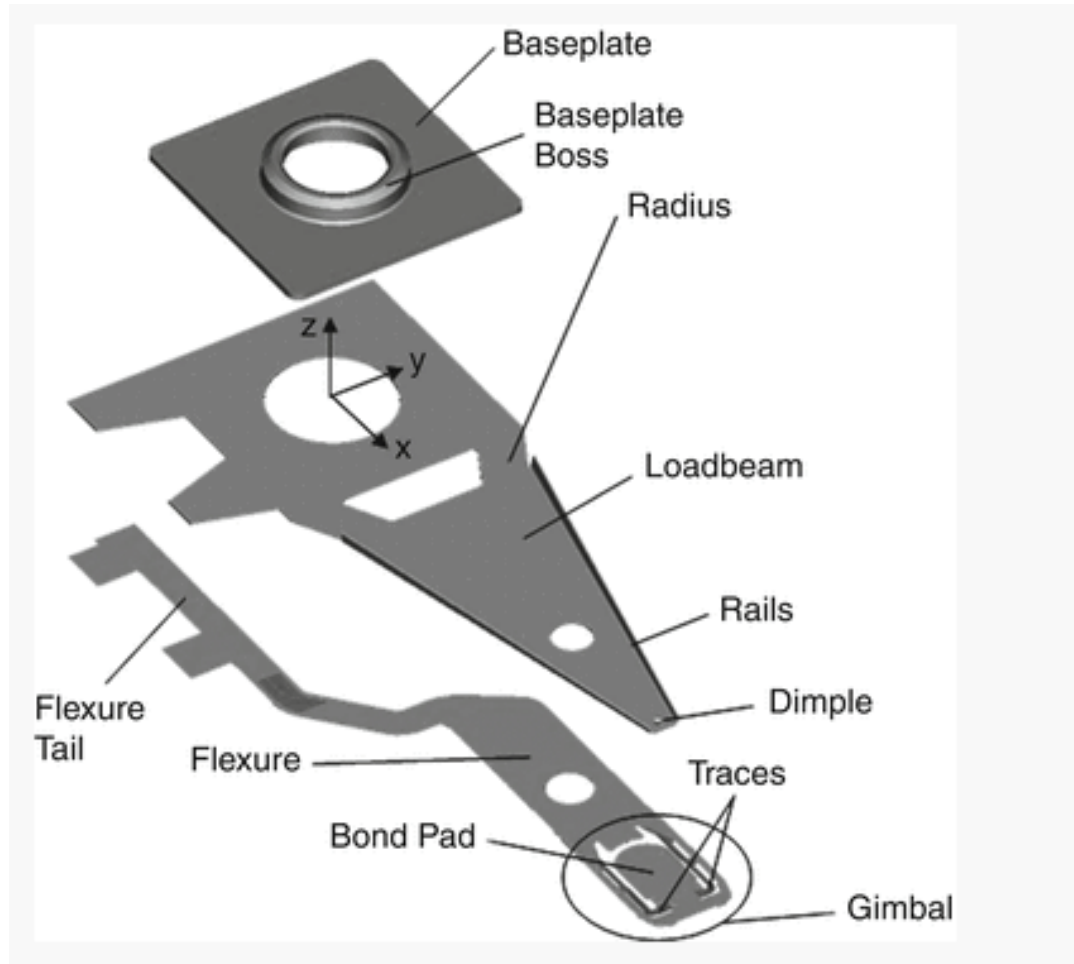


⁹ *Id.*; *Hard Disk Drives*, TEXAS A&M UNIVERSITY, <https://microtribodynamics.engr.tamu.edu/hard-disk-drives/> (last visited Jul. 30, 2019).

¹⁰ *Hard Drives*, EXPLAINTHATSTUFF.

¹¹ *Hard Disk Drives*, TEXAS A&M UNIVERSITY.

(Figure 2: HDD Suspension Assembly)¹²



48. The Defendants manufacture and sell HDD suspension assemblies in the United States and elsewhere to companies that install HDD suspension assemblies into HDDs. Consumers then purchase HDDs as either stand-alone products, or as part of larger systems, such as computers. In 2018, global unit shipments of HDDs were nearly 400 million.¹³ One study predicts HDD shipments will increase in the coming years.¹⁴

¹² *Suspension Assembly for Hard Disk Drive*, Encyclopedia of Tribology, https://link.springer.com/referenceworkentry/10.1007%2F978-0-387-92897-5_1140 (last visited Jul. 30, 2019).

¹³ *Worldwide Unit Shipments of Hard Disk Drives (HDD) from 1976 to 2022 (in millions)*, STATISTA, <https://www.statista.com/statistics/398951/global-shipment-figures-for-hard-disk-drives/> (last visited Jul. 30, 2019).

¹⁴ *Id.*

B. Defendant NHK Agreed to Plead to Guilty and Pay a Criminal Fine for Conspiring to Fix Prices and Allocate Market Shares for HDD Suspension Assemblies.

49. On July 29, 2019, Defendant NHK Spring Co., Ltd. agreed to plead guilty and pay a \$28.5 million fine for its role in the global conspiracy alleged herein.¹⁵ According to the criminal Information, from May 2008 to April 2016, NHK Spring Co., Ltd. engaged in a conspiracy consisting of a continuing agreement, understanding, and concert of action among Defendant NHK and its co-conspirators to refrain from competing on prices for, fix the prices of, and allocate their respective market shares for HDD suspension assemblies to be sold in the United States and elsewhere.¹⁶

50. According to the Information, NHK Spring Co., Ltd. and its co-conspirators effectuated their conspiracy by, among other things:

- a. engaging in discussions and attending meetings during which they reached agreements to refrain from competing on prices for, fix the prices of, and allocate their respective market shares for HDD suspension assemblies;
- b. exchanging HDD suspension assemblies pricing information;
- c. relying on their agreements not to compete and using the exchange pricing information to inform their negotiations with U.S. and foreign customers;
- d. selling HDD suspension assemblies in, or for delivery to, the United States and elsewhere at collusive and noncompetitive prices;
- e. accepting payment for HDD suspension assemblies sold in, or for delivery to the United States and elsewhere at collusive and noncompetitive prices.

C. Additional Government Investigations.

51. In July 2016, the JFTC raided both Defendants TDK and NHK based on suspicion that the two companies and or their subsidiaries fixed prices for HDD suspension components.

¹⁵ *Japanese Manufacturer Agrees to Plead Guilty to Fixing Prices for Suspension Assemblies Used in Hard Disk Drives*, DOJ (Jul. 29, 2019), <https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk>.

¹⁶ Information at 3.

1 Ultimately, on February 9, 2018, the JFTC issued a cease and desist order to both Defendants TDK
2 and NHK and found that they substantially restrained competition in the HDD suspension
3 assemblies market by agreeing to maintain sales prices, fining NHK Spring and one of their
4 subsidiaries ¥1076.16 million yen.¹⁷

5 52. Concurrently with the JFTC investigation, the DOJ opened an investigation
6 regarding HDD suspension assemblies. On July 26, 2016, Defendant HTI received a letter from
7 the DOJ requesting documents relating to the investigation and expressed its intent to cooperate.
8 At the time HTI received the DOJ's letter, TDK Corporation's pending acquisition of HTI was
9 under review by the U.S. Federal Trade Commission.

10 53. Subsequently, in April 2018, Brazilian antitrust authorities launched an investigation
11 into allegations that Defendant TDK and four other companies colluded from 2003 to May 2016 to
12 fix prices of HDD suspension assemblies. The international cartel allegedly shared data and
13 allocated customers to maintain artificially high prices on HDD suspension assemblies used in hard
14 disks.

15 **D. The Characteristics of the HDD Suspension Assembly Market Render the**
16 **Conspiracy More Plausible.**

17 54. Like other electronic product markets that have been the subject of antitrust
18 investigations (cathode ray tubes, lithium ion batteries, and capacitors), the HDD suspension
19 assemblies market has characteristics that make it susceptible to collusion, including high barriers
20 to entry and high market concentration. Together, these characteristics increase the probability and
21 feasibility of anticompetitive conduct in the HDD suspension assemblies market.

22 **1. The HDD Suspension Assemblies Market Has High Barriers to Entry.**

23 55. A collusive arrangement that raises product prices above competitive levels would,
24 under basic economic principles, attract new entrants to the market seeking to benefit from the
25 supracompetitive pricing. Where, however, there are significant barriers to entry, new entrants are
26 much less likely to enter the market. Thus, barriers to entry help facilitate the formation and

27 ¹⁷ Japan Fair Trading Commission, *The JFTC Issued a Cease and Desist Order and Surcharge*
28 *Payment Orders to the Manufactures of Suspension for Hard Disk Drives* (Feb. 9. 2019),
<https://www.jftc.go.jp/en/pressreleases/yearly-2018/February/180209.html>

1 maintenance of cartels.

2 56. This is particularly true here where manufacturing HDD suspension assemblies
3 requires the ability to produce precision assemblies in sufficient volume. As Defendant HTI
4 conceded, “We believe that the number of entities that have the technical capability and capacity
5 for producing precision suspension assemblies or components in large volumes will remain
6 small.”¹⁸

7 57. Moreover, increased demand for other types of data storage technology, such as
8 those that utilize flash memory, limit opportunities for new entrants to the HDD suspension
9 assembly market, which caters to hard disk drives.¹⁹

10 58. Further, heavy capital investments are required in order to enter the market. For
11 example, HTI recently noted that it spent nearly \$50 million between 2012 and 2014 on research
12 and development.²⁰

13 **2. The HDD suspension assemblies Market is Highly Concentrated.**

14 59. Upon information and belief, there were numerous suppliers of HDD suspension
15 assemblies in the 1980s and the market was quite competitive as there were more than 20 producers
16 of HDDs. But by 2005, there were only five major producers left in the market.²¹

17 60. A process of market consolidation began in the 1990s and by the mid-1990’s the
18 market had already become concentrated with HTI becoming the main producer of HDD
19 suspension assemblies, holding at least a 65% market share and generating approximately \$450
20 million per year in revenue.²²

21 61. Over the past 18 years, this trend has been further aggravated by two factors: (a)

22
23 ¹⁸ *Hutchinson Shares Extend Slide on Continued FTC Antitrust Review*, THESTREET (Jan. 5,
2016), <https://www.thestreet.com/story/13412469/1/hutchinson-shares-keep-falling-on-extended-ftc-antitrust-review.html>.

24 ¹⁹ *Id.*

25 ²⁰ See HTI Form 10-K for fiscal year ending September 28, 2014,
http://www.annualreports.com/HostedData/AnnualReportArchive/h/NASDAQ_HTCH_2014.pdf.

26 ²¹ My Data Recovery Lab, *Consolidation of Hard Disk Drive Makers (Part 5) – Into The Future*,
(March 3, 2015) <https://mydatarecoverylab.com/consolidation-of-hard-disk-drive-makers-part-5-into-the-future/>.

27 ²² Hutchinson Technology Incorporated, 5th Annual Technology Conference power point,
28 accessed Oct. 10, 2019 at: http://media.corporate-ir.net/media_files/irol/61/61195/presentations/htch_51403.pdf

1 further consolidation among HDD suspension assemblies manufacturers, and (b) the vertical
2 integration of companies like TDK that formerly depended on independent component suppliers in
3 their manufacturing of HDD suspension assemblies.

4 62. In recent years, market consolidation has continued to the point where globally, there
5 are now only two major suppliers of HDD suspension assemblies: TDK and NHK.

6 63. In 2004, HTI held a 63% share of the HDD suspension assembly market and MPT
7 held 18%.²³

8 64. In 2005, three companies—HTI, NHK Spring, and MPT—collectively controlled
9 approximately 94% of the global HDD suspension assembly market. HTI held a 55% market share,
10 NHK Spring held a 22% market share, and MPT held a 20% market share.²⁴

11 65. In 2007, TDK announced its acquisition of a majority share of MPT. TDK acquired
12 a formerly independent HDD suspension assemblies manufacturer in 2007 and had fully integrated
13 that acquisition by 2009.

14 66. By 2012, Defendants TDK Corp., NHK Spring, and HTI collectively controlled 96%
15 of the global market.²⁵

16 67. In November 2015, TDK announced its acquisition of HTI. The acquisition was
17 completed in October 2016. Following the acquisition, TDK's market share grew to 55-60% market
18 share, and TDK noted that NHK Spring was its only competitor in the global market for HDD
19 suspension assemblies.²⁶

20 68. HTI, at one time the largest manufacturer of HDD suspension assemblies, was
21 acquired by Defendant TDK in 2016. Prior to the acquisition, HTI had gone through its own process
22 of consolidation and was a principal supplier of HDD suspension assemblies to Western Digital
23 Corporation (headquartered in San Jose, CA); Seagate Technology, LLC (Cupertino, CA); and SAE
24 Magnetics, Ltd/TKD Corporation (Tokyo, Japan). That business is now contained within the TDK

25 ²³ Chris Prystay, *Why Disk-Drive Parts Makers in Singapore Look Attractive*, Wall Street Journal,
26 Jan. 6, 2004, <https://www.wsj.com/articles/SB107332640744760100>.

27 ²⁴ MPT, Form 56-1, Part 3, *Business Operation of MPT and its Subsidiaries*, at page 10.

28 ²⁵ Dr. R. Castellano, *The Dynamics of the HDD Industry and Its Impact on CMP*, at 9, available
at <https://pdfs.semanticscholar.org/c293/573aec70fec1d3abcd79f1e86bcd005c044.pdf>

²⁶ TDK Annual Report 2017, page 45.

1 family.

2 **3. Homogeneity of Products and Inelasticity of Demand.**

3 69. HDD suspension assemblies are commodity-like products that are interchangeable
4 among products of the same type and across manufacturers. One Defendant's product for a
5 particular application is substitutable for another's. Forming and sustaining a cartel when the
6 product in question is commodity-like makes it easier to agree on prices to charge and to monitor
7 those prices once an agreement is formed.

8 70. "Elasticity" describes the sensitivity of supply and demand to changes in one or the
9 other such that demand is "inelastic" if an increase in the price of a product results in only a small
10 decline in the quantity sold of that product, if any, such that customers have nowhere to turn for
11 alternative, cheaper products of similar quality and so continue to purchase despite a price increase.

12 71. For a cartel to profit from raising prices above competitive levels, demand must be
13 relatively inelastic at competitive prices. Otherwise, increased prices would result in declining
14 sales, revenues and profits, as customers purchased substitute products or declined to buy
15 altogether. Inelastic demand is a market characteristic that facilitates collusion, allowing producers
16 to raise their prices without triggering customer substitution and lost sales revenue.

17 72. Demand for HDD suspension assemblies is highly inelastic because there are no
18 close substitutes for these products. In addition, customers must purchase HDD suspension
19 assemblies as an essential part of an HDD, or a product containing an HDD, even if the prices are
20 kept at supra-competitive level.

21 **4. Defendants Maintained Close Business Relationships.**

22 73. Close business relations among Defendants provided ample opportunity to collude.

23 74. TDK, through its wholly-owned subsidiary SAE Magnetics, and NHK Spring
24 maintained a joint venture to manufacture HDD suspension assemblies until March 2015.²⁷

25 75. Furthermore, Defendants are geographically centralized, making collusion easy to
26 accomplish.

27
28 ²⁷ TDK Press Release, Apr. 1, 2014, *TDK Subsidiary dissolve Joint Venture of HDD Suspension Manufacturing Company*: https://www.tdk.com/corp/en/news_center/press/201504011768.htm.

76. Opportunities to effectuate the conspiracy took place at meetings of IDEMA, the International Disk Drive Equipment & Materials Association, to which NHK Spring Co., Ltd., SAE Magnetics, and TDK Corporation all belong. IDEMA has two operating subsidiaries, one in Japan and another in the United States. Among other things, IDEMA sponsors Diskcon industry conferences, such as the one held in Japan in July, 2010 and those held or to be held in the United States in October, 2011 and October of this year. One of the asserted benefits to belonging to IDEMA is that it offers “unique networking opportunities for all industry participants.”

CLASS ACTION ALLEGATIONS

77. Plaintiffs bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, seeking equitable and injunctive relief on behalf of the following class (the “Nationwide Class”):

All persons and entities who, during the Class Period, indirectly purchased a product not for resale which included as a component part one or more HDD suspension assemblies that were manufactured or sold by the Defendants, any current or former subsidiary of the Defendants, or any co-conspirator of the Defendants.

78. Plaintiffs also bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure seeking damages pursuant to state antitrust, unfair competition, and consumer protection laws as well as common law unjust enrichment on behalf of the following class (the “Damages Class”):

All persons and entities who, during the Class Period, in the Indirect Purchaser States²⁸ purchased a product not for resale which included as a component part one or more HDD suspension assemblies that were manufactured or sold by the Defendants, any current or former subsidiary of the Defendants, or any co-conspirator of the Defendants.

79. The Nationwide Class and the Damages Class are referred to herein as the “Classes.” Excluded from the Classes are the Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and persons who purchased HDD suspension assemblies directly or for resale.

²⁸ The Indirect Purchaser States are the states listed in the Second and Third Claims for Relief.

1 80. While Plaintiffs do not know the exact number of the members of the Classes,
2 Plaintiffs believe there are (at least) thousands of members in each Class.

3 81. Common questions of law and fact exist as to all members of the Classes. This is
4 particularly true given the nature of the Defendants' conspiracy, which was generally applicable to
5 all the members of both Classes, thereby making appropriate relief with respect to the Classes as a
6 whole. Such questions of law and fact common to the Classes include, but are not limited to:

7 a. Whether the Defendants and their co-conspirators engaged in a combination
8 and conspiracy among themselves to fix, raise, maintain or stabilize the prices of HDD suspension
9 assemblies sold in the United States;

10 b. The identity of the participants of the alleged conspiracy;

11 c. The duration of the alleged conspiracy and the acts carried out by Defendants
12 and their co-conspirators in furtherance of the conspiracy;

13 d. Whether the alleged conspiracy violated the Sherman Act, as alleged in the First
14 Claim for Relief;

15 e. Whether the alleged conspiracy violated state antitrust, unfair competition,
16 and/or consumer protection laws, as alleged in the Second and Third Claims for Relief;

17 f. Whether the Defendants unjustly enriched themselves to the detriment of the
18 Plaintiffs and the members of the Classes, thereby entitling Plaintiffs and the members of the
19 Classes to disgorgement of all benefits derived by Defendants, as alleged in the Fourth Claim for
20 Relief;

21 g. Whether the conduct of the Defendants and their co-conspirators, as alleged in
22 this Complaint, caused injury to the business or property of Plaintiffs and the members of the
23 Classes;

24 h. The effect of the alleged conspiracy on the prices of HDD suspension
25 assemblies sold in the United States during the Class Period;

26 i. Whether Plaintiffs and the members of the Classes had any reason to know or
27 suspect the conspiracy, or any means to discover the conspiracy;

28 j. Whether the Defendants and their co-conspirators fraudulently concealed the

1 conspiracy's existence from Plaintiffs and the members of the Classes;

2 k. The appropriate injunctive and related equitable relief for the Nationwide Class;
3 and

4 l. The appropriate class-wide measure of damages for the Damages Class.

5 82. Plaintiffs' claims are typical of the claims of the members of the Classes, and
6 Plaintiffs will fairly and adequately protect the interests of the Classes. Plaintiffs and all members
7 of the Classes are similarly affected by the Defendants' wrongful conduct in that they paid
8 artificially inflated prices for HDD suspension assemblies purchased indirectly from the
9 Defendants and/or their co-conspirators.

10 83. Plaintiffs' claims arise out of the same common course of conduct giving rise to the
11 claims of the other members of the Classes. Plaintiffs' interests are coincident with, and not
12 antagonistic to, those of the other members of the Classes. Plaintiffs are represented by counsel
13 who are competent and experienced in the prosecution of antitrust and class action litigation.

14 84. The questions of law and fact common to the members of the Classes predominate
15 over any questions affecting only individual members, including legal and factual issues relating to
16 liability and damages.

17 85. Class action treatment is a superior method for the fair and efficient adjudication of
18 the controversy, in that, among other things, such treatment will permit a large number of similarly
19 situated persons to prosecute their common claims in a single forum simultaneously, efficiently and
20 without the unnecessary duplication of evidence, effort and expense that numerous individual
21 actions would engender. The benefits of proceeding through the class mechanism, including
22 providing injured persons or entities with a method for obtaining redress for claims that might not
23 be practicable to pursue individually, substantially outweigh any difficulties that may arise in the
24 management of this class action.

25 86. The prosecution of separate actions by individual members of the Classes would
26 create a risk of inconsistent or varying adjudications, establishing incompatible standards of
27 conduct for the Defendants.

PLAINTIFFS AND THE CLASSES SUFFERED ANTITRUST INJURY

87. Defendants' price-fixing conspiracy had the following effects, among others:

a. Price competition has been restrained or eliminated with respect to HDD suspension assemblies;

b. The prices of HDD suspension assemblies have been fixed, raised, maintained, or stabilized at artificially inflated levels;

c. Indirect purchasers of HDD suspension assemblies have been deprived of free and open competition; and

d. Indirect purchasers of HDD suspension assemblies paid artificially inflated prices for HDD suspension assemblies.

88. During the Class Period, Plaintiffs and the members of the Classes paid supra-competitive prices for HDD suspension assemblies. HDD manufacturers and other purchasers of HDD suspension assemblies passed on inflated prices to Plaintiffs and the members of the Classes. Those overcharges have unjustly enriched Defendants.

89. The markets for HDDs and HDD suspension assemblies are inextricably linked and intertwined because the market for HDD suspension assemblies exists to serve the HDD market. Without the HDDs, the HDD suspension assemblies have little to no value because they have no independent utility.

90. HDD suspension assemblies are identifiable, discrete physical products that remain essentially unchanged when incorporated into an HDD. As a result, HDD suspension assemblies follow a traceable physical chain of distribution from the Defendants to Plaintiffs and the members of the Classes, and costs attributable to HDD suspension assemblies can be traced through the chain of distribution to Plaintiffs and the members of the Classes.

91. Just as HDD suspension assemblies can be physically traced through the supply chain, so can their prices be traced to show that changes in the prices paid by direct purchasers of HDD suspension assemblies affect prices paid by indirect purchasers for HDDs containing HDD suspension assemblies.

92. While even a monopolist would increase its prices when the cost of its inputs

1 increased, the economic necessity of passing through cost changes increases with the degree of
2 competition a firm faces.

3 93. The economic and legal literature has recognized that unlawful overcharges in a
4 component normally result in higher prices for products containing that price-fixed component.
5 Two antitrust scholars – Professors Robert G. Harris (Professor Emeritus and former Chair of the
6 Business and Public Policy Group at the Haas School of Business at the University of California at
7 Berkeley) and the late Lawrence A. Sullivan (Professor of Law Emeritus at Southwestern Law
8 School and author of the Handbook of the Law of Antitrust) – have observed that “in a multiple-
9 level chain of distribution, passing on monopoly overcharges is not the exception: it is the rule.”²⁹

10 94. As Professor Jeffrey K. MacKie-Mason (Arthur W. Burks Professor for Information
11 and Computer Science and Professor of Economics and Public Policy at the University of
12 Michigan), an expert who presented evidence in a number of indirect purchaser cases involving
13 Microsoft Corporation, said (in a passage quoted in the judicial decision in that case granting class
14 certification):

15 As is well known in economic theory and practice, at least some of
16 the overcharge will be passed on by distributors to end consumers.
17 When the distribution markets are highly competitive, as they are
18 here, all or nearly the entire overcharge will be passed on through to
19 ultimate consumers...Both of Microsoft’s experts also agree upon
20 the economic phenomenon of cost pass through, and how it works
21 in competitive markets. This general phenomenon of cost pass
22 through is well established in antitrust laws and economics as well.³⁰

23 95. The purpose of the conspiratorial conduct of Defendants and their co-conspirators
24 was to raise, fix, rig or stabilize the price of HDD suspension assemblies and, as a direct and
25 foreseeable result, the price of products containing HDD suspension assemblies. Economists have
26 developed techniques to isolate and understand the relationship between one “explanatory” variable
27 and a “dependent” variable in those cases when changes in the dependent variable are explained by
28

29 Robert G. Harris & Lawrence A. Sullivan, *Passing on the Monopoly Overcharge: A Comprehensive Policy Analysis*, 128 U. PA. L. REV. 268, 275 (1979).

30 Order re: Class Certification at 13-14, *Coordination Proceedings Special Title (Rule 1550(b)) Microsoft I-V Cases*, No. J.C.C.P. No. 4106, (Cal. Sup. Ct. Aug. 29, 2000).

changes in a multitude of variables, even when all such variables may be changing simultaneously. That analysis—called regression analysis—is commonly used in the real world and in litigation to determine the impact of a price increase on one cost in a product (or service) that is an assemblage of costs. Thus, it is possible to isolate and identify only the impact of an increase in the price of HDD suspension assemblies on prices for products containing HDD suspension assemblies even though such products contain a number of other components whose prices may be changing over time. A regression model can explain how variation in the price of HDD suspension assemblies affects changes in the price of assembled products, such as computers. In such models, the price of HDD suspension assemblies would be treated as an independent or explanatory variable. The model can isolate how changes in the price of HDD suspension assemblies impact the price of products containing HDD suspension assemblies while controlling for the impact of other price-determining factors.

96. The precise amount of the overcharge impacting the prices of products containing HDD suspension assemblies can be measured and quantified. Commonly used and well-accepted economic models can be used to measure both the extent and the amount of the supra-competitive charge passed through the chain of distribution. Thus, the economic harm to Plaintiffs and class members can be quantified.

97. By reason of the violations of the antitrust law alleged herein, Plaintiffs and the members of the Classes have sustained injury to their businesses or property, having paid higher prices for HDD suspension assemblies than they would have paid in the absence of the Defendants' illegal contract, combination, or conspiracy, and, as a result, have suffered damages in an amount presently undetermined. This is an antitrust injury of the type that the antitrust laws were meant to punish and prevent.

**PLAINTIFFS' CLAIMS ARE NOT BARRED
BY THE STATUTE OF LIMITATIONS**

A. Defendants Have Engaged in a Continuing Violation.

98. Plaintiffs repeat and re-allege the allegations set forth above.

99. Plaintiffs and members of the Classes had no knowledge of the combination or

1 conspiracy alleged herein, or of facts sufficient to place them on inquiry notice of the claims set
2 forth herein.

3 100. Plaintiffs and members of the Classes are consumers who purchased HDDs
4 containing HDD assemblies for their own use and not for resale. No information in the public
5 domain was available to Plaintiffs and members of the Classes. Moreover, Plaintiffs and members
6 of the Classes had no direct contact or interaction with the Defendants and had no means from
7 which they could have discovered that the Defendants were engaged in the conspiracy combination
8 and conspiracy alleged herein.

9 101. Throughout the Class Period, and continuing thereafter, no information in the public
10 domain was available to Plaintiff and Class members that revealed sufficient information that any
11 of the Defendants was involved in a criminal conspiracy to fix prices for HDD suspension
12 assemblies.

13 102. This Complaint alleges a continuing course of conduct and Defendants' unlawful
14 conduct has inflicted continuing and accumulating harm within the applicable statutes of
15 limitations.

16 103. Each time Defendants engaged in an unlawful act complained of here, Defendants
17 undertook an overt act that has inflicted harm on Plaintiffs and other members of the Classes.

18 104. For these reasons, the statutes of limitations applicable to Plaintiffs' and the Classes'
19 claims have been tolled with respect to the claims asserted in this complaint.

20 **B. Fraudulent Concealment Tolled the Statute of Limitations.**

21 105. In the alternative, application of the doctrine of fraudulent concealment tolled the
22 statute of limitations on the claims asserted herein by Plaintiffs and the Classes. Plaintiffs and
23 members of the Classes did not discover, and could not discover through the exercise of reasonable
24 diligence, the existence of the conspiracy alleged herein.

25 106. Plaintiffs and members of the Classes were unaware of Defendants' unlawful
26 conduct, and did not know that they were paying supra-competitive prices for HDD suspension
27 assemblies throughout the United States during the Class Period. No information, actual or
28

constructive, was ever made available to Plaintiffs and members of the Classes that they were being injured by Defendants' unlawful conduct.

107. By its very nature, the Defendants' and their co-conspirators' anticompetitive conspiracy was inherently self-concealing. HDD suspension assemblies are not exempt from antitrust regulation and, thus, Plaintiffs and members of the Classes reasonably considered the HDD suspension assemblies industry to be a competitive industry. Accordingly, a reasonable person under the circumstances would not have been alerted to begin to investigate the legitimacy of Defendants' prices for HDD suspension assemblies.

108. Because the alleged conspiracy was self-concealing and affirmatively concealed by Defendants and their co-conspirators, Plaintiffs and members of the Classes had no knowledge of the alleged conspiracy, or of any facts or information that would have caused a reasonably diligent person to investigate whether a conspiracy existed.

109. For these reasons, the statute of limitations applicable to Plaintiffs' and the Classes' claims was tolled and did not begin to run.

II. VIOLATIONS ALLEGED

FIRST CLAIM FOR RELIEF

Violation of Section 1 of the Sherman Act (on behalf of Plaintiffs and the Nationwide Class)

110. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

111. Defendants and unnamed co-conspirators entered into and engaged in a contract, combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

112. The acts done by the Defendants as part of, and in furtherance of, their and their co-conspirators' contract, combination, or conspiracy were authorized, ordered, or done by their officers, agents, employees, or representatives while actively engaged in the management of their affairs.

113. During the Class Period, Defendants and their co-conspirators entered into a continuing agreement, understanding and conspiracy in restraint of trade to artificially fix, raise, stabilize, and control prices for HDD suspension assemblies, thereby creating anticompetitive

1 effects.

2 114. The anticompetitive acts were intentionally directed at the United States market for
3 HDD suspension assemblies and had a substantial and foreseeable effect on interstate commerce
4 by raising and fixing prices for HDD suspension assemblies throughout the United States.

5 115. The conspiratorial acts and combinations have caused unreasonable restraints in the
6 markets for HDD suspension assemblies.

7 116. As a result of Defendants' unlawful conduct, Plaintiffs and other similarly situated
8 indirect purchasers in the Nationwide Class who purchased HDD suspension assemblies have been
9 harmed by being forced to pay inflated, supra-competitive prices for HDD suspension assemblies.

10 117. In formulating and carrying out the alleged agreement, understanding and
11 conspiracy, Defendants and their co-conspirators did those things that they combined and conspired
12 to do, including but not limited to the acts, practices and course of conduct set forth herein.

13 118. Defendants conspiracy had the following effects, among others:

14 a. Price competition in the market for HDD suspension assemblies has been
15 restrained, suppressed, and/or eliminated in the United States;

16 b. Prices for HDD suspension assemblies sold by Defendants and their co-
17 conspirators have been fixed, raised, maintained, and stabilized at artificially high, non-competitive
18 levels throughout the United States; and

19 c. Plaintiffs and members of the Nationwide Class who purchased HDD
20 suspension assemblies indirectly from Defendants and their co-conspirators have been deprived of
21 the benefits of free and open competition.

22 119. Plaintiffs and members of the Nationwide Class have been injured and will continue
23 to be injured in their business and property by paying more for HDD suspension assemblies
24 purchased indirectly from Defendants and their co-conspirators than they would have paid and will
25 pay in the absence of the conspiracy.

26 120. The alleged contract, combination, or conspiracy is a *per se* violation of the federal
27 antitrust laws.

28 121. Plaintiffs and members of the Nationwide Class are entitled to an injunction against

Defendants, preventing and restraining the violations alleged herein.

SECOND CLAIM FOR RELIEF
Violation of State Antitrust Statutes
(on behalf of Plaintiffs and the Damages Class)

122. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

123. During the Class Period, Defendants and their co-conspirators engaged in a continuing contract, combination or conspiracy with respect to the sale of HDD suspension assemblies in unreasonable restraint of trade and commerce and in violation of the various state antitrust and other statutes set forth below.

124. The contract, combination, or conspiracy consisted of an agreement among Defendants and their co-conspirators to fix, raise, inflate, stabilize, and/or maintain at artificially supra-competitive levels the prices for HDD suspension assemblies and to allocate customers for these products in the United States.

125. In formulating and effectuating this conspiracy, the Defendants and their co-conspirators performed acts in furtherance of the combination and conspiracy, including:

a. participating in meetings and conversations among themselves in the United States and elsewhere during which they exchanged pricing information and agreed to price HDD suspension assemblies at certain levels, and otherwise to fix, increase, inflate, maintain, or stabilize effective prices paid by Plaintiffs and members of the Damages Class with respect to HDD suspension assemblies sold in the United States;

b. allocating customers and markets for HDD suspension assemblies in the United States in furtherance of their agreements; and

c. participating in meetings and conversations among themselves in the United States and elsewhere to implement, adhere to, and police the unlawful agreements they reached.

126. Defendants and their co-conspirators engaged in the actions described above for the purpose of carrying out their unlawful agreements to fix, maintain, increase, or stabilize prices and to allocate customers with respect to HDD suspension assemblies.

127. Defendants' anticompetitive acts described above were knowing and willful and constitute violations or flagrant violations of the following state antitrust statutes.

128. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Arizona Revised Statutes, §§ 44-1401, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout Arizona; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at artificially high levels throughout Arizona; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

b. During the Class Period, Defendants' illegal conduct substantially affected Arizona commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants entered into agreements in restraint of trade in violation of Ariz. Rev. Stat. §§ 44-1401, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Ariz. Rev. Stat. §§ 44-1401, *et seq.*

129. Defendants have entered into an unlawful agreement in restraint of trade in violation of the California Business and Professions Code, §§ 16700, *et seq.*

a. During the Class Period, Defendants and their co-conspirators entered into and engaged in a continuing unlawful trust in restraint of the trade and commerce described above in violation of Section 16720, California Business and Professions Code. Defendants, each of them, have acted in violation of Section 16720 to fix, raise, stabilize, and maintain prices of, and allocate markets for, HDD suspension assemblies at supra-competitive levels.

b. The aforesaid violations of Section 16720, California Business and Professions Code, consisted, without limitation, of a continuing unlawful trust and concert of action among the Defendants and their co-conspirators, the substantial terms of which were to fix, raise, maintain, and stabilize the prices of, and to allocate markets for, HDD suspension assemblies.

c. For the purpose of forming and effectuating the unlawful trust, the Defendants

1 and their co-conspirators have done those things which they combined and conspired to do,
 2 including but not limited to the acts, practices and course of conduct set forth above and the
 3 following: (1) fixing, raising, stabilizing, and pegging the price of HDD suspension assemblies;
 4 and (2) allocating among themselves the production of HDD suspension assemblies.

5 d. The combination and conspiracy alleged herein has had, *inter alia*, the
 6 following effects: (1) price competition in the sale of HDD suspension assemblies has been
 7 restrained, suppressed, and/or eliminated in the State of California; (2) prices for HDD suspension
 8 assemblies sold by Defendants and their co-conspirators have been fixed, raised, stabilized, and
 9 pegged at artificially high, non-competitive levels in the State of California and throughout the
 10 United States; and (3) those who purchased HDD suspension assemblies directly or indirectly from
 11 Defendants and their co-conspirators have been deprived of the benefit of free and open
 12 competition.

13 e. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
 14 and members of the Damages Class have been injured in their business and property in that they
 15 paid more for HDD suspension assemblies than they otherwise would have paid in the absence of
 16 Defendants' unlawful conduct. As a result of Defendants' violation of Section 16720 of the
 17 California Business and Professions Code, Plaintiffs and members of the Damages Class seek treble
 18 damages and their cost of suit, including a reasonable attorney's fee, pursuant to Section 16750(a)
 19 of the California Business and Professions Code.

20 130. Defendants have entered into an unlawful agreement in restraint of trade in violation
 21 of the District of Columbia Code Annotated §§ 28-4501, *et seq.*

22 a. Defendants' combinations or conspiracies had the following effects: (1) HDD
 23 suspension assemblies price competition was restrained, suppressed, and eliminated throughout the
 24 District of Columbia; (2) HDD suspension assemblies prices were raised, fixed, maintained and
 25 stabilized at artificially high levels throughout the District of Columbia; (3) Plaintiffs and members
 26 of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members
 27 of the Damages Class paid supra-competitive, artificially inflated prices for HDD suspension
 28 assemblies.

b. During the Class Period, Defendants' illegal conduct substantially affected District of Columbia commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of District of Columbia Code Ann. §§ 28-4501, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under District of Columbia Code Ann. §§ 28-4501, *et seq.*

131. The Defendants have entered into an unlawful agreement in restraint of trade in violation of the Iowa Code §§ 553.1, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout Iowa; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at artificially high levels throughout Iowa; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

b. During the Class Period, Defendants' illegal conduct substantially affected Iowa commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Iowa Code §§ 553.1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Iowa Code §§ 553.1, *et seq.*

132. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Kansas Statutes Annotated, §§ 50-101, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) HDD

1 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
2 Kansas; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
3 artificially high levels throughout Kansas; (3) Plaintiffs and members of the Damages Class were
4 deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid
5 supra-competitive, artificially inflated prices for HDD suspension assemblies.

6 b. During the Class Period, Defendants' illegal conduct substantially affected
7 Kansas commerce.

8 c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
9 and members of the Damages Class have been injured in their business and property and are
10 threatened with further injury.

11 d. By reason of the foregoing, Defendants have entered into agreements in
12 restraint of trade in violation of Kansas Stat. Ann. §§ 50-101, *et seq.* Accordingly, Plaintiffs and
13 members of the Damages Class seek all forms of relief available under Kansas Stat. Ann. §§ 50-
14 101, *et seq.*

15 133. Defendants have entered into an unlawful agreement in restraint of trade in violation
16 of the Maine Revised Statutes, Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.*

17 a. Defendants' combinations or conspiracies had the following effects: (1) HDD
18 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
19 Maine; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
20 artificially high levels throughout Maine; (3) Plaintiffs and members of the Damages Class were
21 deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid
22 supra-competitive, artificially inflated prices for HDD suspension assemblies.

23 b. During the Class Period, Defendants' illegal conduct substantially affected
24 Maine commerce.

25 c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
26 and members of the Damages Class have been injured in their business and property and are
27 threatened with further injury.

28 d. By reason of the foregoing, Defendants have entered into agreements in

1 restraint of trade in violation of Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.* Accordingly, Plaintiffs
2 and members of the Damages Class seek all relief available under Maine Rev. Stat. Ann. 10, §§
3 1101, *et seq.*

4 134. Defendants have entered into an unlawful agreement in restraint of trade in violation
5 of the Michigan Compiled Laws Annotated §§ 445.771, *et seq.*

6 a. Defendants' combinations or conspiracies had the following effects: (1) HDD
7 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
8 Michigan; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
9 artificially high levels throughout Michigan; (3) Plaintiffs and members of the Damages Class were
10 deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid
11 supra-competitive, artificially inflated prices for HDD suspension assemblies.

12 b. During the Class Period, Defendants' illegal conduct substantially affected
13 Michigan commerce.

14 c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
15 and members of the Damages Class have been injured in their business and property and are
16 threatened with further injury.

17 d. By reason of the foregoing, Defendants have entered into agreements in
18 restraint of trade in violation of Michigan Comp. Laws Ann. §§ 445.771, *et seq.* Accordingly,
19 Plaintiffs and members of the Damages Class seek all relief available under Michigan Comp. Laws
20 Ann. §§ 445.771, *et seq.*

21 135. Defendants have entered into an unlawful agreement in restraint of trade in violation
22 of the Minnesota Annotated Statutes §§ 325D.49, *et seq.*

23 a. Defendants' combinations or conspiracies had the following effects: (1) HDD
24 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
25 Minnesota; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
26 artificially high levels throughout Minnesota; (3) Plaintiffs and members of the Damages Class
27 were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class
28 paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

1 b. During the Class Period, Defendants' illegal conduct substantially affected
2 Minnesota commerce.

3 c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
4 and members of the Damages Class have been injured in their business and property and are
5 threatened with further injury.

6 d. By reason of the foregoing, Defendants have entered into agreements in
7 restraint of trade in violation of Minnesota Stat. §§ 325D.49, *et seq.* Accordingly, Plaintiffs and
8 members of the Damages Class seek all relief available under Minnesota Stat. §§ 325D.49, *et seq.*

9 136. Defendants have entered into an unlawful agreement in restraint of trade in violation
10 of the Mississippi Code Annotated §§ 75-21-1, *et seq.*

11 a. Defendants' combinations or conspiracies had the following effects: (1) HDD
12 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
13 Mississippi; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
14 artificially high levels throughout Mississippi; (3) Plaintiffs and members of the Damages Class
15 were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class
16 paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

17 b. During the Class Period, Defendants' illegal conduct substantially affected
18 Mississippi commerce.

19 c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
20 and members of the Damages Class have been injured in their business and property and are
21 threatened with further injury.

22 d. By reason of the foregoing, Defendants have entered into agreements in
23 restraint of trade in violation of Mississippi Code Ann. §§ 75-21-1, *et seq.* Accordingly, Plaintiffs
24 and members of the Damages Class seek all relief available under Mississippi Code Ann. §§ 75-
25 21-1, *et seq.*

26 137. Defendants have entered into an unlawful agreement in restraint of trade in violation
27 of the Nebraska Revised Statutes §§ 59-801, *et seq.*

28 a. Defendants' combinations or conspiracies had the following effects: (1) HDD

1 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
2 Nebraska; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
3 artificially high levels throughout Nebraska; (3) Plaintiffs and members of the Damages Class were
4 deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid
5 supra-competitive, artificially inflated prices for HDD suspension assemblies.

6 b. During the Class Period, Defendants' illegal conduct substantially affected
7 Nebraska commerce.

8 c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
9 and members of the Damages Class have been injured in their business and property and are
10 threatened with further injury.

11 d. By reason of the foregoing, Defendants have entered into agreements in
12 restraint of trade in violation of Nebraska Revised Statutes §§ 59-801, *et seq.* Accordingly,
13 Plaintiffs and members of the Damages Class seek all relief available under Nebraska Revised
14 Statutes §§ 59-801, *et seq.*

15 138. Defendants have entered into an unlawful agreement in restraint of trade in violation
16 of the Nevada Revised Statutes Annotated §§ 598A.010, *et seq.*

17 a. Defendants' combinations or conspiracies had the following effects: (1) HDD
18 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
19 Nevada; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
20 artificially high levels throughout Nevada; (3) Plaintiffs and members of the Damages Class were
21 deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid
22 supra-competitive, artificially inflated prices for HDD suspension assemblies.

23 b. During the Class Period, Defendants' illegal conduct substantially affected
24 Nevada commerce.

25 c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
26 and members of the Damages Class have been injured in their business and property and are
27 threatened with further injury.

28 d. By reason of the foregoing, Defendants have entered into agreements in

1 restraint of trade in violation of Nevada Rev. Stat. Ann. §§ 598A.010, *et seq.* Accordingly, Plaintiffs
2 and members of the Damages Class seek all relief available under Nevada Rev. Stat. Ann. §§
3 598A.010, *et seq.*

4 139. Defendants have entered into an unlawful agreement in restraint of trade in violation
5 of the New Hampshire Revised Statutes §§ 356:1, *et seq.*

6 a. Defendants' combinations or conspiracies had the following effects: (1) HDD
7 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
8 New Hampshire; (2) HDD suspension assemblies prices were raised, fixed, maintained and
9 stabilized at artificially high levels throughout New Hampshire; (3) Plaintiffs and members of the
10 Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the
11 Damages Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

12 b. During the Class Period, Defendants' illegal conduct substantially affected New
13 Hampshire commerce.

14 c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
15 and members of the Damages Class have been injured in their business and property and are
16 threatened with further injury.

17 d. By reason of the foregoing, Defendants have entered into agreements in
18 restraint of trade in violation of New Hampshire Revised Statutes §§ 356:1, *et seq.* Accordingly,
19 Plaintiffs and members of the Damages Class seek all relief available under New Hampshire
20 Revised Statutes §§ 356:1, *et seq.*

21 140. Defendants have entered into an unlawful agreement in restraint of trade in violation
22 of the New Mexico Statutes Annotated §§ 57-1-1, *et seq.*

23 a. Defendants' combinations or conspiracies had the following effects: (1) HDD
24 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
25 New Mexico; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized
26 at artificially high levels throughout New Mexico; (3) Plaintiffs and members of the Damages Class
27 were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class
28 paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

b. During the Class Period, Defendants' illegal conduct substantially affected New Mexico commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of New Mexico Stat. Ann. §§ 57-1-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New Mexico Stat. Ann. §§ 57-1-1, *et seq.*

141. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New York General Business Laws §§ 340, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout New York; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at artificially high levels throughout New York; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies when they purchased HDDs containing HDD suspension assemblies.

b. During the Class Period, Defendants' illegal conduct substantially affected New York commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of the New York Donnelly Act, §§ 340, *et seq.* The conduct set forth above is a *per se* violation of the Act. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New York Gen. Bus. Law §§ 340, *et seq.*

142. Defendants have entered into an unlawful agreement in restraint of trade in violation

1 of the North Carolina General Statutes §§ 75-1, *et seq.*

2 a. Defendants' combinations or conspiracies had the following effects: (1) HDD
3 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
4 North Carolina; (2) HDD suspension assemblies prices were raised, fixed, maintained and
5 stabilized at artificially high levels throughout North Carolina; (3) Plaintiffs and members of the
6 Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the
7 Damages Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

8 b. During the Class Period, Defendants' illegal conduct substantially affected
9 North Carolina commerce.

10 c. As a direct and proximate result of the Defendants' unlawful conduct, Plaintiffs
11 and members of the Damages Class have been injured in their business and property and are
12 threatened with further injury.

13 d. By reason of the foregoing, Defendants have entered into agreements in
14 restraint of trade in violation of North Carolina Gen. Stat. §§ 75-1, *et seq.* Accordingly, Plaintiffs
15 and members of the Damages Class seek all relief available under North Carolina Gen. Stat. §§ 75-
16 1, *et seq.*

17 143. Defendants have entered into an unlawful agreement in restraint of trade in violation
18 of the North Dakota Century Code §§ 51-08.1-01, *et seq.*

19 a. Defendants' combinations or conspiracies had the following effects: (1) HDD
20 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
21 North Dakota; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized
22 at artificially high levels throughout North Dakota; (3) Plaintiffs and members of the Damages
23 Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages
24 Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

25 b. During the Class Period, Defendants' illegal conduct had a substantial effect on
26 North Dakota commerce.

27 c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
28 and members of the Damages Class have been injured in their business and property and are

1 threatened with further injury.

2 d. By reason of the foregoing, Defendants have entered into agreements in
3 restraint of trade in violation of North Dakota Cent. Code §§ 51-08.1-01, *et seq.* Accordingly,
4 Plaintiffs and members of the Damages Class seek all relief available under North Dakota Cent.
5 Code §§ 51-08.1-01, *et seq.*

6 144. Defendants have entered into an unlawful agreement in restraint of trade in violation
7 of the Oregon Revised Statutes §§ 646.705, *et seq.*

8 a. Defendants' combinations or conspiracies had the following effects: (1) HDD
9 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
10 Oregon; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
11 artificially high levels throughout Oregon; (3) Plaintiffs and members of the Damages Class were
12 deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid
13 supra-competitive, artificially inflated prices for HDD suspension assemblies.

14 b. During the Class Period, Defendants' illegal conduct had a substantial effect on
15 Oregon commerce.

16 c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
17 and members of the Damages Class have been injured in their business and property and are
18 threatened with further injury.

19 d. By reason of the foregoing, Defendants have entered into agreements in
20 restraint of trade in violation of Oregon Revised Statutes §§ 646.705, *et seq.* Accordingly, Plaintiffs
21 and members of the Damages Class seek all relief available under Oregon Revised Statutes §§
22 646.705, *et seq.*

23 145. Defendants have entered into an unlawful agreement in restraint of trade in violation
24 of the South Dakota Codified Laws §§ 37-1-3.1, *et seq.*

25 a. Defendants' combinations or conspiracies had the following effects: (1) HDD
26 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
27 South Dakota; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized
28 at artificially high levels throughout South Dakota; (3) Plaintiffs and members of the Damages

1 Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages
2 Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

3 b. During the Class Period, Defendants' illegal conduct had a substantial effect on
4 South Dakota commerce.

5 c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
6 and members of the Damages Class have been injured in their business and property and are
7 threatened with further injury.

8 d. By reason of the foregoing, Defendants have entered into agreements in
9 restraint of trade in violation of South Dakota Codified Laws Ann. §§ 37-1, *et seq.* Accordingly,
10 Plaintiffs and members of the Damages Class seek all relief available under South Dakota Codified
11 Laws Ann. §§ 37-1, *et seq.*

12 146. Defendants have entered into an unlawful agreement in restraint of trade in violation
13 of the Tennessee Code Annotated §§ 47-25-101, *et seq.*

14 a. Defendants' combinations or conspiracies had the following effects: (1) HDD
15 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
16 Tennessee; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
17 artificially high levels throughout Tennessee; (3) Plaintiffs and members of the Damages Class
18 were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class
19 paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

20 b. During the Class Period, Defendants' illegal conduct had a substantial effect on
21 Tennessee commerce.

22 c. As a direct and proximate result of the Defendants' unlawful conduct, Plaintiffs
23 and members of the Damages Class have been injured in their business and property and are
24 threatened with further injury.

25 d. By reason of the foregoing, Defendants have entered into agreements in
26 restraint of trade in violation of Tennessee Code Ann. §§ 47-25-101, *et seq.* Accordingly, Plaintiffs
27 and members of the Damages Class seek all relief available under Tennessee Code Ann. §§ 47-25-
28 101, *et seq.*

147. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Utah Code Annotated §§ 76-10-3101, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout Utah; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at artificially high levels throughout Utah; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on Utah commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Utah Code Annotated §§ 76-10-3101, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Utah Code Annotated §§ 76-10-3101, *et seq.*

148. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Vermont Stat. Ann. 9 §§ 2453, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout Vermont; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at artificially high levels throughout Vermont; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on Vermont commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs

1 and members of the Damages Class have been injured in their business and property and are
2 threatened with further injury.

3 d. By reason of the foregoing, Defendants have entered into agreements in
4 restraint of trade in violation of Vermont Stat. Ann. 9 §§ 2453, *et seq.* Accordingly, Plaintiffs and
5 members of the Damages Class seek all relief available under Vermont Stat. Ann. 9 §§ 2453, *et*
6 *seq.*

7 149. Defendants have entered into an unlawful agreement in restraint of trade in violation
8 of the West Virginia Code §§ 47-18-1, *et seq.*

9 a. Defendants' combinations or conspiracies had the following effects: (1) HDD
10 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
11 West Virginia; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized
12 at artificially high levels throughout West Virginia; (3) Plaintiffs and members of the Damages
13 Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages
14 Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

15 b. During the Class Period, Defendants' illegal conduct had a substantial effect on
16 West Virginia commerce.

17 c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
18 and members of the Damages Class have been injured in their business and property and are
19 threatened with further injury.

20 d. By reason of the foregoing, Defendants have entered into agreements in
21 restraint of trade in violation of West Virginia Code §§ 47-18-1, *et seq.* Accordingly, Plaintiffs and
22 members of the Damages Class seek all relief available under West Virginia Code §§ 47-18-1, *et*
23 *seq.*

24 150. Defendants have entered into an unlawful agreement in restraint of trade in violation
25 of the Wisconsin Statutes §§ 133.01, *et seq.*

26 a. Defendants' combinations or conspiracies had the following effects: (1) HDD
27 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
28 Wisconsin; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at

1 artificially high levels throughout Wisconsin; (3) Plaintiffs and members of the Damages Class
2 were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class
3 paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

4 b. During the Class Period, Defendants' illegal conduct had a substantial effect on
5 Wisconsin commerce.

6 c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
7 and members of the Damages Class have been injured in their business and property and are
8 threatened with further injury.

9 d. By reason of the foregoing, Defendants have entered into agreements in
10 restraint of trade in violation of Wisconsin Stat. §§ 133.01, *et seq.* Accordingly, Plaintiffs and
11 members of the Damages Class seek all relief available under Wisconsin Stat. §§ 133.01, *et seq.*

12 151. Plaintiffs and members of the Damages Class in each of the above states have been
13 injured in their business and property by reason of Defendants' unlawful combination, contract,
14 conspiracy and agreement. Plaintiffs and members of the Damages Class have paid more for HDD
15 suspension assemblies than they otherwise would have paid in the absence of Defendants' unlawful
16 conduct. This injury is of the type the antitrust laws of the above states were designed to prevent
17 and flows from that which makes Defendants' conduct unlawful.

18 152. In addition, Defendants have profited significantly from the aforesaid conspiracy.
19 Defendants' profits derived from their anticompetitive conduct come at the expense and detriment
20 of the Plaintiffs and the members of the Damages Class.

21 153. Accordingly, Plaintiffs and the members of the Damages Class in each of the above
22 jurisdictions seek damages (including statutory damages where applicable), to be trebled or
23 otherwise increased as permitted by a particular jurisdiction's antitrust law, and costs of suit,
24 including reasonable attorneys' fees, to the extent permitted by the above state laws.

25 **THIRD CLAIM FOR RELIEF**
26 **Violation of State Consumer Protection Statutes**
(on behalf of Plaintiffs and the Damages Class)

27 154. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

28 155. Defendants engaged in unfair competition or unfair, unconscionable, deceptive or

1 fraudulent acts or practices in violation of the state consumer protection and unfair competition
2 statutes listed below.

3 156. Defendants have knowingly entered into an unlawful agreement in restraint of trade
4 in violation of the Arkansas Code Annotated, § 4-88-101, *et seq.*

5 a. Defendants knowingly agreed to, and did in fact, act in restraint of trade or
6 commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially
7 inflated levels, the prices at which HDD suspension assemblies were sold, distributed, or obtained
8 in Arkansas and took efforts to conceal their agreements from Plaintiffs and members of the
9 Damages Class.

10 b. The aforementioned conduct on the part of the Defendants constituted
11 “unconscionable” and “deceptive” acts or practices in violation of Arkansas Code Annotated, § 4-
12 88-107(a)(10).

13 c. Defendants’ unlawful conduct had the following effects: (1) HDD suspension
14 assemblies price competition was restrained, suppressed, and eliminated throughout Arkansas; (2)
15 HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high
16 levels throughout Arkansas; (3) Plaintiffs and the members of the Damages Class were deprived of
17 free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supra-
18 competitive, artificially inflated prices for HDD suspension assemblies.

19 d. During the Class Period, Defendants’ illegal conduct substantially affected
20 Arkansas commerce and consumers.

21 e. As a direct and proximate result of the unlawful conduct of Defendants,
22 Plaintiffs and the members of the Damages Class have been injured in their business and property
23 and are threatened with further injury.

24 f. Defendants have engaged in unfair competition or unfair or deceptive acts or
25 practices in violation of Arkansas Code Annotated, § 4-88-107(a)(10) and, accordingly, Plaintiffs
26 and the members of the Damages Class seek all relief available under that statute.

27 157. Defendants have engaged in unfair competition or unfair, unconscionable, deceptive
28 or fraudulent acts or practices in violation of California Business and Professions Code § 17200, et

1 seq.:

2 a. During the Class Period, Defendants marketed, sold, or distributed HDD
3 suspension assemblies in California, and committed and continue to commit acts of unfair
4 competition, as defined by Sections 17200, *et seq.* of the California Business and Professions Code,
5 by engaging in the acts and practices specified above.

6 b. This claim is instituted pursuant to Sections 17203 and 17204 of the California
7 Business and Professions Code, to obtain restitution from these Defendants for acts, as alleged
8 herein, that violated Section 17200 of the California Business and Professions Code, commonly
9 known as the Unfair Competition Law.

10 c. Defendants' conduct as alleged herein violates Section 17200. The acts,
11 omissions, misrepresentations, practices and non-disclosures of Defendants, as alleged herein,
12 constituted a common, continuous, and continuing course of conduct of unfair competition by
13 means of unfair, unlawful, and/or fraudulent business acts or practices within the meaning of
14 California Business and Professions Code, Section 17200, *et seq.*, including, but not limited to, the
15 following: (1) the violations of Section 1 of the Sherman Act, as set forth above; (2) the violations
16 of Section 16720, *et seq.*, of the California Business and Professions Code, set forth above;

17 d. Defendants' acts, omissions, misrepresentations, practices, and non-
18 disclosures, as described above, whether or not in violation of Section 16720, *et seq.*, of the
19 California Business and Professions Code, and whether or not concerted or independent acts, are
20 otherwise unfair, unconscionable, unlawful or fraudulent;

21 e. Defendants' acts or practices are unfair to consumers of HDD suspension
22 assemblies (or products containing them) in the State of California within the meaning of Section
23 17200, California Business and Professions Code;

24 f. Defendants' acts and practices are fraudulent or deceptive within the meaning
25 of Section 17200 of the California Business and Professions Code;

26 g. Plaintiffs and members of the Damages Class are entitled to full restitution
27 and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have
28 been obtained by Defendants as a result of such business acts or practices;

1 h. The illegal conduct alleged herein is continuing and there is no indication that
2 Defendants will not continue such activity into the future;

3 i. The unlawful and unfair business practices of Defendants, each of them, have
4 caused and continue to cause Plaintiffs and the members of the Damages Class to pay supra-
5 competitive and artificially-inflated prices for HDD suspension assemblies (or products containing
6 them). Plaintiffs and the members of the Damages Class suffered injury in fact and lost money or
7 property as a result of such unfair competition.

8 j. The conduct of Defendants as alleged in this Complaint violates Section 17200
9 of the California Business and Professions Code.

10 k. As alleged in this Complaint, Defendants and their co-conspirators have been
11 unjustly enriched as a result of their wrongful conduct and by Defendants' unfair competition.
12 Plaintiffs and the members of the Damages Class are accordingly entitled to equitable relief
13 including restitution and/or disgorgement of all revenues, earnings, profits, compensation, and
14 benefits that may have been obtained by Defendants as a result of such business practices, pursuant
15 to the California Business and Professions Code, Sections 17203 and 17204.

16 158. Defendants have engaged in unfair competition or unfair, unconscionable, or
17 deceptive acts or practices in violation of District of Columbia Code § 28-3901, *et seq.*

18 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce by
19 affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
20 prices at which HDD suspension assemblies were sold, distributed or obtained in the District of
21 Columbia.

22 b. The foregoing conduct constitutes "unlawful trade practices," within the
23 meaning of D.C. Code § 28-3904. Plaintiffs were not aware of Defendants' price-fixing conspiracy
24 and were therefore unaware that they were being unfairly and illegally overcharged. There was a
25 gross disparity of bargaining power between the parties with respect to the price charged by
26 Defendants for HDD suspension assemblies. Defendants had the sole power to set that price and
27 Plaintiffs had no power to negotiate a lower price. Moreover, Plaintiffs lacked any meaningful
28 choice in purchasing HDD suspension assemblies because they were unaware of the unlawful

1 overcharge and there was no alternative source of supply through which Plaintiffs could avoid the
 2 overcharges. Defendants' conduct with regard to sales of HDD suspension assemblies, including
 3 their illegal conspiracy to secretly fix the price of HDD suspension assemblies at supra-competitive
 4 levels and overcharge consumers, was substantively unconscionable because it was one-sided and
 5 unfairly benefited Defendants at the expense of Plaintiffs and the public. Defendants took grossly
 6 unfair advantage of Plaintiffs. The suppression of competition that has resulted from Defendants'
 7 conspiracy has ultimately resulted in unconscionably higher prices for consumers so that there was
 8 a gross disparity between the price paid and the value received for HDD suspension assemblies.

9 c. Defendants' unlawful conduct had the following effects: (1) HDD suspension
 10 assemblies price competition was restrained, suppressed, and eliminated throughout the District of
 11 Columbia; (2) HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at
 12 artificially high levels throughout the District of Columbia; (3) Plaintiffs and members of the
 13 Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the
 14 Damages Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

15 d. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
 16 and members of the Damages Class have been injured and are threatened with further injury.
 17 Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation
 18 of District of Columbia Code § 28-3901, *et seq.*, and, accordingly, Plaintiffs and members of the
 19 Damages Class seek all relief available under that statute.

20 159. Defendants have engaged in unfair competition or unfair, unconscionable, or
 21 deceptive acts or practices in violation of the Florida Deceptive and Unfair Trade Practices Act,
 22 Fla. Stat. §§ 501.201, *et seq.*

23 a. Defendants' unlawful conduct had the following effects: (1) HDD suspension
 24 assemblies price competition was restrained, suppressed, and eliminated throughout Florida; (2)
 25 HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high
 26 levels throughout Florida; (3) Plaintiffs and members of the Damages Class were deprived of free
 27 and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-
 28 competitive, artificially inflated prices for HDD suspension assemblies.

1 b. During the Class Period, Defendants' illegal conduct substantially affected
2 Florida commerce and consumers.

3 c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
4 and members of the Damages Class have been injured and are threatened with further injury.

5 d. Defendants have engaged in unfair competition or unfair or deceptive acts or
6 practices in violation of Florida Stat. § 501.201, *et seq.*, and, accordingly, Plaintiffs and members
7 of the Damages Class seek all relief available under that statute.

8 160. Defendants have engaged in unfair competition or unfair, unconscionable, or
9 deceptive acts or practices in violation of the Hawaii Revised Statutes Annotated §§ 480-1, *et seq.*

10 a. Defendants' unlawful conduct had the following effects: (1) HDD suspension
11 assemblies price competition was restrained, suppressed, and eliminated throughout Hawaii; (2)
12 HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high
13 levels throughout Hawaii; (3) Plaintiffs and members of the Damages Class were deprived of free
14 and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-
15 competitive, artificially inflated prices for HDD suspension assemblies.

16 b. During the Class Period, Defendants' illegal conduct substantially affected
17 Hawaii commerce and consumers.

18 c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
19 and members of the Damages Class have been injured and are threatened with further injury.

20 d. Defendants have engaged in unfair competition or unfair or deceptive acts or
21 practices in violation of Hawaii Rev. Stat. § 480, *et seq.*, and, accordingly, Plaintiffs and members
22 of the Damages Class seek all relief available under that statute.

23 161. Defendants have engaged in unfair competition or unfair, unconscionable, or
24 deceptive acts or practices in violation of Mass. G.L. c. 93A, §2.

25 a. Defendants were engaged in trade or commerce as defined by G.L. c. 93A.

26 b. Defendants agreed to, and did in fact, act in restraint of trade or commerce in a
27 market which includes Massachusetts, by affecting, fixing, controlling and/or maintaining at
28 artificial and non-competitive levels, the prices at which HDD suspension assemblies were sold,

distributed, or obtained in Massachusetts and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

c. Defendants' unlawful conduct had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout Massachusetts; (2) HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Massachusetts; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

d. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class were injured and are threatened with further injury.

e. Certain of the Defendants have or will be served with a demand letter in accordance with G.L. c. 93A, § 9, or, upon information and belief, such service of a demand letter was unnecessary due to the defendant not maintaining a place of business within the Commonwealth of Massachusetts or not keeping assets within the Commonwealth.

f. By reason of the foregoing, Defendants engaged in unfair competition and unfair or deceptive acts or practices, in violation of G.L. c. 93A, §2. Defendants' and their co-conspirators' violations of Chapter 93A were knowing or willful, entitling Plaintiffs and members of the Damages Class to multiple damages.

162. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et. seq.*

a. Plaintiffs and members of the Damages Class purchased HDD suspension assemblies for personal, family, or household purposes.

b. Defendants engaged in the conduct described herein in connection with the sale of HDD suspension assemblies in trade or commerce in a market that includes Missouri.

c. Defendants and their co-conspirators agreed to, and did in fact affect, fix, control, and/or maintain, at artificial and non-competitive levels, the prices at which HDD suspension assemblies were sold, distributed, or obtained in Missouri, which conduct constituted

1 unfair practices in that it was unlawful under federal and state law, violated public policy, was
2 unethical, oppressive and unscrupulous, and caused substantial injury to Plaintiffs and members of
3 the Damages Class.

4 d. Defendants concealed, suppressed, and omitted to disclose material facts to
5 Plaintiffs and members of the Damages Class concerning Defendants' unlawful activities and
6 artificially inflated prices for HDD suspension assemblies. The concealed, suppressed, and omitted
7 facts would have been important to Plaintiffs and members of the Damages Class as they related to
8 the cost of HDD suspension assemblies they purchased.

9 e. Defendants misrepresented the real cause of price increases and/or the absence
10 of price reductions in HDD suspension assemblies by making public statements that were not in
11 accord with the facts.

12 f. Defendants' statements and conduct concerning the price of HDD suspension
13 assemblies were deceptive as they had the tendency or capacity to mislead Plaintiffs and members
14 of the Damages Class to believe that they were purchasing HDD suspension assemblies at prices
15 established by a free and fair market.

16 g. Defendants' unlawful conduct had the following effects: (1) HDD suspension
17 assemblies price competition was restrained, suppressed, and eliminated throughout Missouri; (2)
18 HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially
19 high levels throughout Missouri; (3) Plaintiffs and members of the Damages Class were deprived
20 of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-
21 competitive, artificially inflated prices for HDD suspension assemblies.

22 h. The foregoing acts and practices constituted unlawful practices in violation of
23 the Missouri Merchandising Practices Act.

24 i. As a direct and proximate result of the above-described unlawful practices,
25 Plaintiffs and members of the Damages Class suffered ascertainable loss of money or property.

26 j. Accordingly, Plaintiffs and members of the Damages Class seek all relief
27 available under Missouri's Merchandising Practices Act, specifically Mo. Rev. Stat. § 407.020,
28 which prohibits "the act, use or employment by any person of any deception, fraud, false pretense,

1 false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of
 2 any material fact in connection with the sale or advertisement of any merchandise in trade or
 3 commerce...,” as further interpreted by the Missouri Code of State Regulations, 15 CSR 60-7.010,
 4 *et seq.*, 15 CSR 60-8.010, *et seq.*, and 15 CSR 60-9.010, *et seq.*, and Mo. Rev. Stat. § 407.025,
 5 which provides for the relief sought in this count.

6 163. Defendants have engaged in unfair competition or unfair, unconscionable, or
 7 deceptive acts or practices in violation of the Montana Consumer Protection Act of 1973, Mont.
 8 Code, §§ 30-14-101, *et seq.*

9 a. Defendants’ unlawful conduct had the following effects: (1) HDD suspension
 10 assemblies price competition was restrained, suppressed, and eliminated throughout Montana; (2)
 11 HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high
 12 levels throughout Montana; (3) Plaintiffs and members of the Damages Class were deprived of free
 13 and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-
 14 competitive, artificially inflated prices for HDD suspension assemblies.

15 b. During the Class Period, Defendants’ illegal conduct substantially affected
 16 Montana commerce and consumers.

17 c. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiffs
 18 and members of the Damages Class have been injured and are threatened with further injury.

19 d. Defendants have engaged in unfair competition or unfair or deceptive acts or
 20 practices in violation of Mont. Code, §§ 30-14-101, *et seq.*, and, accordingly, Plaintiffs and
 21 members of the Damages Class seek all relief available under that statute.

22 164. Defendants have engaged in unfair competition or unfair, unconscionable, or
 23 deceptive acts or practices in violation of the New Mexico Stat. § 57-12-1, *et seq.*

24 a. Defendants and their co-conspirators agreed to, and did in fact, act in restraint
 25 of trade or commerce by affecting, fixing, controlling and/or maintaining at non-competitive and
 26 artificially inflated levels, the prices at which HDD suspension assemblies were sold, distributed
 27 or obtained in New Mexico and took efforts to conceal their agreements from Plaintiffs and
 28 members of the Damages Class.

b. The aforementioned conduct on the part of Defendants constituted “unconscionable trade practices,” in violation of N.M.S.A. Stat. § 57-12-3, in that such conduct, *inter alia*, resulted in a gross disparity between the value received by Plaintiffs and the members of the Damages Class and the prices paid by them for HDD suspension assemblies as set forth in N.M.S.A., § 57-12-2E. Plaintiffs were not aware of Defendants’ price-fixing conspiracy and were therefore unaware that they were being unfairly and illegally overcharged. There was a gross disparity of bargaining power between the parties with respect to the price charged by Defendants for HDD suspension assemblies. Defendants had the sole power to set that price and Plaintiffs had no power to negotiate a lower price. Moreover, Plaintiffs lacked any meaningful choice in purchasing HDD suspension assemblies because they were unaware of the unlawful overcharge and there was no alternative source of supply through which Plaintiffs’ could avoid the overcharges. Defendants’ conduct with regard to sales of HDD suspension assemblies, including their illegal conspiracy to secretly fix the price of HDD suspension assemblies at supra-competitive levels and overcharge consumers, was substantively unconscionable because it was one-sided and unfairly benefited Defendants at the expense of Plaintiffs and the public. Defendants took grossly unfair advantage of Plaintiffs. The suppression of competition that has resulted from Defendants’ conspiracy has ultimately resulted in unconscionably higher prices for consumers so that there was a gross disparity between the price paid and the value received for HDD suspension assemblies.

c. Defendants’ unlawful conduct had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout New Mexico; (2) HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New Mexico; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

d. During the Class Period, Defendants’ illegal conduct substantially affected New Mexico commerce and consumers.

e. As a direct and proximate result of the unlawful conduct of Defendants, Plaintiffs and the members of the Damages Class have been injured and are threatened with further

1 injury.

2 f. Defendants have engaged in unfair competition or unfair or deceptive acts or
3 practices in violation of New Mexico Stat. § 57-12-1, *et seq.*, and, accordingly, Plaintiffs and the
4 members of the Damages Class seek all relief available under that statute.

5 165. Defendants have engaged in unfair competition or unfair, unconscionable, or
6 deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

7 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce by
8 affecting, fixing, controlling and/or maintaining, at artificial and non-competitive levels, the prices
9 at which HDD suspension assemblies were sold, distributed or obtained in New York and took
10 efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

11 b. Defendants and their co-conspirators made public statements about the prices
12 of HDD suspension assemblies and products containing HDD suspension assemblies that
13 Defendants knew would be seen by New York consumers; such statements either omitted material
14 information that rendered the statements that they made materially misleading or affirmatively
15 misrepresented the real cause of price increases for HDD suspension assemblies and products
16 containing HDD suspension assemblies; and Defendants alone possessed material information that
17 was relevant to consumers, but failed to provide the information.

18 c. Because of Defendants' unlawful trade practices in the State of New York, New
19 York consumer class members who indirectly purchased HDD suspension assemblies were misled
20 to believe that they were paying a fair price for HDD suspension assemblies or the price increases
21 for HDD suspension assemblies were for valid business reasons; and similarly situated consumers
22 were potentially affected by Defendants' conspiracy.

23 d. Defendants knew that their unlawful trade practices with respect to pricing
24 HDD suspension assemblies would have an impact on New York consumers and not just the
25 Defendants' direct customers.

26 e. Defendants knew that their unlawful trade practices with respect to pricing
27 HDD suspension assemblies would have a broad impact, causing consumer class members who
28 indirectly purchased HDD suspension assemblies to be injured by paying more for HDD suspension

1 assemblies than they would have paid in the absence of Defendants' unlawful trade acts and
2 practices.

3 f. The conduct of the Defendants described herein constitutes consumer-oriented
4 deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349, which resulted in
5 consumer injury and broad adverse impact on the public at large, and harmed the public interest of
6 New York State in an honest marketplace in which economic activity is conducted in a competitive
7 manner.

8 g. Defendants' unlawful conduct had the following effects: (1) HDD suspension
9 assemblies price competition was restrained, suppressed, and eliminated throughout New York; (2)
10 HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high
11 levels throughout New York; (3) Plaintiffs and members of the Damages Class were deprived of
12 free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-
13 competitive, artificially inflated prices for HDD suspension assemblies.

14 h. During the Class Period, Defendants' marketed, sold, or distributed HDD
15 suspension assemblies in New York, and Defendants' illegal conduct substantially affected New
16 York commerce and consumers.

17 i. During the Class Period, each of the Defendants named herein, directly, or
18 indirectly and through affiliates they dominated and controlled, manufactured, sold and/or
19 distributed HDD suspension assemblies in New York.

20 j. Plaintiffs and members of the Damages Class seek all relief available pursuant
21 to N.Y. Gen. Bus. Law § 349 (h).

22 166. Defendants have engaged in unfair competition or unfair, unconscionable, or
23 deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq.*

24 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce by
25 affecting, fixing, controlling and/or maintaining, at artificial and non-competitive levels, the prices
26 at which HDD suspension assemblies were sold, distributed or obtained in North Carolina and took
27 efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

28 b. Defendants' price-fixing conspiracy could not have succeeded absent deceptive

1 conduct by Defendants to cover up their illegal acts. Secrecy was integral to the formation,
2 implementation and maintenance of Defendants' price-fixing conspiracy. Defendants committed
3 inherently deceptive and self-concealing actions, of which Plaintiffs could not possibly have been
4 aware. Defendants and their co-conspirators publicly provided pre-textual and false justifications
5 regarding their price increases. Defendants' public statements concerning the price of HDD
6 suspension assemblies created the illusion of competitive pricing controlled by market forces rather
7 than supra-competitive pricing driven by Defendants' illegal conspiracy. Moreover, Defendants
8 deceptively concealed their unlawful activities by mutually agreeing not to divulge the existence of
9 the conspiracy to outsiders, conducting meetings and conversations in secret, confining the plan to
10 a small group of higher-level officials at each company and avoiding the creation of documents
11 which would reveal the antitrust violations.

12 c. The conduct of the Defendants described herein constitutes consumer-oriented
13 deceptive acts or practices within the meaning of North Carolina law, which resulted in consumer
14 injury and broad adverse impact on the public at large, and harmed the public interest of North
15 Carolina consumers in an honest marketplace in which economic activity is conducted in a
16 competitive manner.

17 d. Defendants' unlawful conduct had the following effects: (1) HDD suspension
18 assemblies price competition was restrained, suppressed, and eliminated throughout North
19 Carolina; (2) HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at
20 artificially high levels throughout North Carolina; (3) Plaintiffs and members of the Damages Class
21 were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class
22 paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

23 e. During the Class Period, Defendants' marketed, sold, or distributed HDD
24 suspension assemblies in North Carolina, and Defendants' illegal conduct substantially affected
25 North Carolina commerce and consumers.

26 f. During the Class Period, each of the Defendants named herein, directly, or
27 indirectly and through affiliates they dominated and controlled, manufactured, sold and/or
28 distributed HDD suspension assemblies in North Carolina.

1 g. Plaintiffs and members of the Damages Class seek actual damages for their
2 injuries caused by these violations in an amount to be determined at trial and are threatened with
3 further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or
4 practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq.*, and, accordingly, Plaintiffs and
5 members of the Damages Class seek all relief available under that statute.

6 167. Defendants have engaged in unfair competition or unfair, unconscionable, or
7 deceptive acts or practices in violation of the Rhode Island Unfair Trade Practice and Consumer
8 Protection Act, R.I. Gen. Laws §§ 6-13.1-1, *et seq.*

9 a. Members of this Damages Class purchased HDD suspension assemblies for
10 personal, family, or household purposes.

11 b. Defendants agreed to, and did in fact, act in restraint of trade or commerce in a
12 market that includes Rhode Island, by affecting, fixing, controlling, and/or maintaining, at artificial
13 and non-competitive levels, the prices at which HDD suspension assemblies were sold, distributed,
14 or obtained in Rhode Island.

15 c. Defendants deliberately failed to disclose material facts to Plaintiffs and
16 members of the Damages Class concerning Defendants' unlawful activities and artificially inflated
17 prices for HDD suspension assemblies. Defendants owed a duty to disclose such facts, and
18 considering the relative lack of sophistication of the average, non-business consumer, Defendants
19 breached that duty by their silence. Defendants misrepresented to all consumers during the Class
20 Period that Defendants' prices for HDD suspension assemblies were competitive and fair.

21 d. Defendants' unlawful conduct had the following effects: (1) HDD suspension
22 assemblies price competition was restrained, suppressed, and eliminated throughout Rhode Island;
23 (2) HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially
24 high levels throughout Rhode Island; (3) Plaintiffs and members of the Damages Class were
25 deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid
26 supra-competitive, artificially inflated prices for HDD suspension assemblies.

27 e. As a direct and proximate result of the Defendants' violations of law, Plaintiffs
28 and members of the Damages Class suffered an ascertainable loss of money or property as a result

1 of Defendants' use or employment of unconscionable and deceptive commercial practices as set
2 forth above. That loss was caused by Defendants' willful and deceptive conduct, as described
3 herein.

4 f. Defendants' deception, including their affirmative misrepresentations and
5 omissions concerning the price of HDD suspension assemblies, likely misled all consumers acting
6 reasonably under the circumstances to believe that they were purchasing HDD suspension
7 assemblies at prices set by a free and fair market. Defendants' affirmative misrepresentations and
8 omissions constitute information important to Plaintiffs and members of the Damages Class as they
9 related to the cost of HDD suspension assemblies they purchased.

10 g. Defendants have engaged in unfair competition or unfair or deceptive acts or
11 practices in violation of Rhode Island Gen. Laws. § 6-13.1-1, *et seq.*, and, accordingly, Plaintiffs
12 and members of the Damages Class seek all relief available under that statute.

13 168. Defendants have engaged in unfair competition or unfair, unconscionable, or
14 deceptive acts or practices in violation of South Carolina Unfair Trade Practices Act, S.C. Code
15 Ann. §§ 39-5-10, *et seq.*

16 a. Defendants' combinations or conspiracies had the following effects: (1) HDD
17 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
18 South Carolina; (2) HDD suspension assemblies prices were raised, fixed, maintained, and
19 stabilized at artificially high levels throughout South Carolina; (3) Plaintiffs and members of the
20 Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the
21 Damages Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

22 b. During the Class Period, Defendants' illegal conduct had a substantial effect on
23 South Carolina commerce.

24 c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
25 and members of the Damages Class have been injured in their business and property and are
26 threatened with further injury.

27 169. Defendants have engaged in unfair competition or unfair or deceptive acts or
28 practices in violation of S.C. Code Ann. §§ 39-5-10, *et seq.*, and, accordingly, Plaintiffs and the

1 members of the Damages Class seek all relief available under that statute. Defendants have engaged
 2 in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of 9
 3 Vermont § 2451, *et seq.*:

4 a. Defendants and their co-conspirators agreed to, and did in fact, act in restraint
 5 of trade or commerce in a market that includes Vermont by affecting, fixing, controlling, and/or
 6 maintaining, at artificial and non-competitive levels, the prices at which HDD suspension
 7 assemblies were sold, distributed, or obtained in Vermont.

8 b. Defendants deliberately failed to disclose material facts to Plaintiffs and
 9 members of the Damages Class concerning their unlawful activities and artificially inflated prices
 10 for HDD suspension assemblies. Defendants owed a duty to disclose such facts, and considering
 11 the relative lack of sophistication of the average, non-business purchaser, Defendants breached that
 12 duty by their silence. Defendants misrepresented to all purchasers during the Class Period that their
 13 prices for HDD suspension assemblies were competitive and fair.

14 c. Defendants' unlawful conduct had the following effects: (1) HDD suspension
 15 assemblies price competition was restrained, suppressed, and eliminated throughout Vermont; (2)
 16 HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high
 17 levels throughout Vermont; (3) Plaintiffs and members of the Damages Class were deprived of free
 18 and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-
 19 competitive, artificially inflated prices for HDD suspension assemblies.

20 d. As a direct and proximate result of Defendants' violations of law, Plaintiffs and
 21 members of the Damages Class suffered an ascertainable loss of money or property as a result of
 22 Defendants' use or employment of unconscionable and deceptive commercial practices as set forth
 23 above. That loss was caused by the Defendants' willful and deceptive conduct, as described herein.

24 e. Defendants' deception, including their omissions concerning the price of HDD
 25 suspension assemblies, likely misled all purchasers acting reasonably under the circumstances to
 26 believe that they were purchasing HDD suspension assemblies at prices born by a free and fair
 27 market. Defendants' misleading conduct and unconscionable activities constitutes unfair
 28 competition or unfair or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*, and,

1 accordingly, Plaintiffs and members of the Damages Class seek all relief available under that
2 statute.

3 **FOURTH CLAIM FOR RELIEF**

4 **Unjust Enrichment**

(on behalf of Plaintiffs and members of the Damages Class)

5 170. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

6 171. Plaintiffs bring this claim under the laws of all states listed in the Second and Third
7 Claims, *supra*.

8 172. As a result of their unlawful conduct described above, Defendants have and will
9 continue to be unjustly enriched. Defendants have been unjustly enriched by the receipt of, at a
10 minimum, unlawfully inflated prices and unlawful profits on sales of HDD suspension assemblies.

11 173. Defendants have benefited from their unlawful acts and it would be inequitable for
12 Defendants to be permitted to retain any of the ill-gotten gains resulting from the overpayments
13 made by Plaintiffs of the members of the Damages Class for HDD suspension assemblies.

14 174. Plaintiffs and the members of the Damages Class are entitled to the amount of
15 Defendants' ill-gotten gains resulting from their unlawful, unjust, and inequitable conduct.
16 Plaintiffs and the members of the Damages Class are entitled to the establishment of a constructive
17 trust consisting of all ill-gotten gains from which Plaintiffs and the members of the Damages Class
18 may make claims on a pro rata basis.

19 175. Pursuit of any remedies against the firms from which Plaintiffs and the members of
20 the Damages Class purchased HDDs containing HDD suspension assemblies subject to
21 Defendants' conspiracy would have been futile.

22 **PRAYER FOR RELIEF**

23 Accordingly, Plaintiffs respectfully request that:

24 176. The Court determine that this action may be maintained as a class action under Rule
25 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and direct that reasonable notice
26 of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to
27 each and every member of the Classes;
28

177. That the unlawful conduct, contract, conspiracy, or combination alleged herein be adjudged and decreed:

- a. An unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act;
- b. A *per se* violation of Section 1 of the Sherman Act;
- c. An unlawful combination, trust, agreement, understanding and/or concert of action in violation of the state antitrust and unfair competition and consumer protection laws as set forth herein; and
- d. Acts of unjust enrichment by Defendants as set forth herein.

178. Plaintiffs and the members of the Damages Class recover damages, to the maximum extent allowed under such laws, and that a joint and several judgment in favor of Plaintiffs and the members of the Damages Class be entered against Defendants in an amount to be trebled to the extent such laws permit;

179. Plaintiffs and the members of the Damages Class recover damages, to the maximum extent allowed by such laws, in the form of restitution and/or disgorgement of profits unlawfully gained from them;

180. Defendants, their affiliates, successors, transferees, assignees and other officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained from in any manner continuing, maintaining or renewing the conduct, contract, conspiracy, or combination alleged herein, or from entering into any other contract, conspiracy, or combination having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect;

181. Plaintiffs and the members of the Damages Class be awarded restitution, including disgorgement of profits Defendants obtained as a result of their acts of unfair competition and acts of unjust enrichment;

182. Plaintiffs and the members of the Classes be awarded pre- and post- judgment interest as provided by law, and that such interest be awarded at the highest legal rate from and

1 after the date of service of this Complaint;

2 183. Plaintiffs and the members of the Classes recover their costs of suit, including
3 reasonable attorneys' fees, as provided by law; and

4 184. Plaintiffs and members of the Classes have such other and further relief as the case
5 may require and the Court may deem just and proper.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiffs demand a trial by jury, pursuant to Federal Rule of Civil Procedure 38(b), of all
8 issues so triable.

9 Dated: October 16, 2019

/s/ Aaron M. Sheanin

Aaron M. Sheanin (SBN 214472)

ROBINS KAPLAN LLP

2440 W. El Camino Real, Suite 100

Mountain View, California 94040

Telephone: (650) 784-4040

Facsimile: (650) 784-4041

asheanin@robinskaplan.com

Hollis Salzman

Kellie Lerner

ROBINS KAPLAN LLP

399 Park Avenue, Suite 3600

New York, NY 10022

Telephone: (212) 980-7400

Facsimile: (212) 980-7499

hsalzman@robinskaplan.com

klerner@robinskaplan.com

Shpetim Ademi

Mark Eldridge

ADEMI & O'REILLY, LLP

3620 East Layton Avenue

Cudahy, Wisconsin 53110

Telephone: (414) 482-8000

Facsimile: (414) 482-8001

sademi@ademilaw.com

meldridge@ademilaw.com

M. Stephen Dampier

THE DAMPIER LAW FIRM, P.C.

55 North Section Street

Fairhope, AL 36532

Telephone: (251) 929-0900

Facsimile: (251) 929-0800

stevedampier@dampierlaw.com

Attorneys for Plaintiffs and the Proposed Classes

ROBINS KAPLAN LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW